TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 803

THE UNITED STATES OF AMERICA, PETITIONER

vs.

HARRY S. EMORY, ST. JAMES DISTILLERY, INC., AND ST. JAMES DISTILLERY

ON WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS, STATE OF MISSOURI

PETITION FOR CERTIORARI FILED MARCH 1, 1941

CERTIORARI GRANTED APRIL 7, 1941

SUPREME COURT OF THE UNITED STATES

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

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1 In Circuit Court of Phelps County

September Term, 1936

No. 3918

HARRY S. EMORY, PLAINTIFF

vs.

ST. JAMES DISTILLERY, INCORPORATED, A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS

Order appointing receiver

(Sept. 9, 1936)

Now, on this day, this cause coming on to be heard, and the plaintiff herein appearing in person and by counsel, and the defendant St. James Distillery Incorporated, appearing by Joseph P. McGowan, Secretary and Treasurer of said defendant company, and defendant St. James Distillery, a Corporation, likewise appearing by said Joseph P. McGowan, he being in charge of the office, principal place of business and the affairs of both defendant corporations, and it appearing to the Court that due process had been served upon said defendants notifying them of the pendency of this proceeding, and at the time of the hearing thereon, the Court proceeded to hear the testimony and argument of counsel, and thereupon, the Court doth order, adjudge, and decree as follows:

First. The Court doth find the issues for the plaintiff, Harry S. Emory, and that he has a just claim and demand for the sum of Two Hundred Eighty-one Dollars, and doth order and decree that an injunction and restraining order be issued herein. And that the defendants, St. James Distillery Incorporated, a Corporation, and St. James Distillery, a Corporation, and then directors, officers, and agents, be, and the same are, hereby forever restrained and enjoined from conveying, transferring, or alienating any of the property, assets, or affects of said defendant companies to any person whatever, or from in anywise or to any extent controlling or attempting to exercise any control whatever over any books, accounts, property, or assets of said defendant companies.

2 Second. The Court doth order and decree that W. D. Jones be, and he is, hereby appointed received of all of the

property and assets of said St. James Distillery Incorporated and St. James Distillery, and the said receiver, or his successor, is hereby authorized to take charge and possession of all of the books, accounts, property, real and personal, belonging to said defendants, and to account for the same to the Court for the benefit of the creditors and shareholders of corporations, and to preserve and keep them until duly ordered sold by the Court, and all said property of said defendant companies is hereby vested in said W. D. Jones, Receiver, or his successor, and the Court doth further order and decree that said W. D. Jones shall duly qualify as such receiver within fifteen days from this date by filing his bond as such receiver, in the sum of Two Thousand Five Hundred Dollars, and that failing so to do, a vacancy in such receivership shall exist, to be filled in vacation on motion of either party or the Judge of the Court; and said Receiver is hereby ordered to make immediate report and filed a schedule of all the properties and assets of said company as soon as he shall take possession of the same, and further obey such order of the Court touching the premises as the Court shall make from time to time, in term or vacation.

Third. The Court doth order, decree, and adjudge that the plaintiff have and recover his costs herein laid out and expenses against the said St. James Distillery Incorporated and St. James Distillery.

Fourth. The Court doth find the issues for the plaintiff, Harry S. Emory, and that his claim and demand is a debt for wages due and common labor rendered as an employee of defendant corporations, and for and in their behalf. And that such demand is entitled to a priority of payment from the money and assests of the corporations in the hands of the receiver, and the Court doth further order, decree and adjudge that said plaintiff be, and he is, hereby declared a creditor of said defendant corporations with a right to a preference in the sum of Two Hundred Eighty-One Dollars, and that his debt shall be paid out of the funds in the hands of the receiver, on the further order of this Court for the payment of creditors.

3 In Circuit Court of Phelps County

[Title omitted.]

Order overruling motion for preference

Sept. 8, 1937

Now at this day comes the Federal Housing Administration and files their petition for preference in the said cause. And

having filed their stipulation as to facts filed as of April 22, 1937, upon which the Court bases its judgment in said cause and all the facts being seen, heard and fully understood, the Court doth overrule the motion for preference of the Federal Housing Administration.

It is therefore considered by the Court that the said Federal Housing Administration take nothing by its said motion and that the receiver pay over to the common labor the amount set aside for them together with all costs in this behalf laid out and expended, and have thereof execution.

In Circuit Court of Phelps County

Recital as to motion for new trial

[Title omitted.]

Motion for new trial filed Sept. 8, 1937.

In Circuit Court of Phelps County

[Title omitted.]

Order overruling motion for new trial

April 20, 1938

Motion for new trial heretofore filed upon being taken up and argued is by the Court overruled.

4 In Circuit Court of Phelps County

[Title omitted.]

Order allowing appeal

April 20, 1938

Affidavit for appeal filed, and appeal allowed to the Supreme Court of the State of Missouri.

In Circuit Court of Phelps County

[Title omitted.]

Order allowing filing of bill of exceptions

The Federal Housing Administration is by the Court allowed to file Bill of Exceptions at or before the next regular term of this Court, and docket fee of ten dollars paid in open court.

[Clerk's certificate to foregoing transcript omitted in printing.]

6 In Supreme Court of Missouri

HARRY S. EMORY, RESPONDENT

vs.

ST. JAMES DISTILLERY, INCORPORATED, A CORPORATION, AND ST. JAMES DISTILLERY, A COPORATION, DEFENDANTS, FEDERAL HOUSING ADMINISTRATION, APPELLANT

Appeal from the Circuit Court of Phelps County

Order transferring cause to Court of Appeals

Dec. 13, 1939

Now at this day it appearing to the satisfaction of the Court from the motion of appellant, that this court is without jurisdiction to hear and determine this cause, the court doth order that said cause be and the same is hereby transferred to the Springfield Court of Appeals.

[Clerk's Certificate to foregoing paper omitted in printing.]

8 In Circuit Court of Phelps County, State of Missouri

April Term, 1939

No. 3629

HENRY S. EMORY, PLAINTIFF

v.

ST. JAMES DISTILLERY, INCORPORATED, A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS, UNITED STATES OF AMERICA, INTERVENOR

Amendment of judgment and nunc pro tunc entry thereof

Now on this 19th day of June 1939, the same being the Seventh day of the regular April Term of the Circuit Court of Phelps County, come the parties herein by their attorneys, and the United States of America, Intervenor, shows the Court that in the record, as entered in the above entitled cause by the Clerk on the 8th day of September 1937, the same being the third day of the regular September Term of the Circuit Court of Phelps County, there appears the following recitals:

"Now at this day comes the Federal Housing Administration and files their petition for preference in the said cause. And having filed their stipulation as to facts filed as of April 22, 1937,

upon which the Court bases its judgment in said cause and all the facts being seen, heard and fully understood, the Court doth overrule the motion for preference of the Federal Housing Administration.

"It is therefore considered by the Court that the said Federal Housing Administration take nothing by its said motion and that the receiver pay over to the common labor the amount set aside for them together with all costs in this behalf laid out and expended, and have thereof execution.

9 "And on the same day and date the following entry also appears of record:

* * * * *

"Motion for new trial heretofore filed upon being taken up and argued is by the Court overruled.

"And on the same day and date the following entry also appears of record:

* * * * *

"Affidavit for appeal filed, and appeal allowed to the Supreme Court of the State of Missouri.

"And on the same day and date the following entry also appears of record:

* * * * *

"The Federal Housing Administration is by the Court allowed to file Bill of Exceptions at or before the next regular term of this Court, and docket fee of ten dollars paid in open court."

Intervenor further shows to the Court that the recital of the proceedings on said day should have contained a record entry that the claim of Intervenor was allowed as a common claim.

Intervenor further shows to the Court that the full record entry reciting the proceedings on said day, as appears from the minutes, files and records of the Court, should have been in the following form:

"Now on this 8th day of September 1937, come the parties by their attorneys and the United States of America, Intervenor herein, files its petition asking that its claim be allowed and that the Court find that the said claim is entitled to preference over all other claims. And the parties file, as of April 22nd, 1937, their stipulation of fact.

"The Court finds that there is due the Intervenor the sum of Five Thousand Nine Hundred Eighty-Eight Dollars and Eighty-Eight Cents ($5,988.88) principal, and the sum of Four Hundred Eleven Dollars and Seventy-Three Cents ($411.73) as interest, making a total of Six Thousand Four Hundred Dollars and

Sixty-One Cents ($6,400.61), which should be allowed as
10 an ordinary claim, but further finds that it should not be granted priority over the claims of the laborers in the distribution of the assets of the estate.

"Come now the parties and the United States of America files its motion for a new trial, and the motion is taken up and submitted to the Court, and having been by the Court duly considered it is overruled.

"It is therefore ordered and adjudged that the Intervenor, the United States of America, have and recover of the defendants the sum of Six Thousand Four Hundred Dollars and Sixty-One Cents ($6,400.61), principal and interest as aforesaid, and that it be allowed as an ordinary demand against said estate.

"It is the further order and judgment of the Court that the Intervenor's petition for a preference over the claims of the laborers be denied, and that the Intervenor take nothing by its prayer for priority in the payment of its claim and that the defendants and their receiver go hence without day.

"It is the further order and judgment of the Court that the receiver pay over to the common laborers the amounts set aside for them, together with their costs in this behalf laid out and expended, and have thereof execution.

"Come now the parties and the United States of America files its affidavit and pays to the Clerk the docket fee of $10.00, and prays for an appeal to the Supreme Court, on consideration of which it is by the Court ordered that an appeal be allowed.

"The United States of America is by the Court allowed to file its bill of exceptions on or before the next regular term of this Court."

And Intervenor moves that said record entry be corrected and amended, and entered nunc pro tunc in order to show the said facts.

And said motion having been heard, and due notice thereof having been waived by the parties herein, and the Court being satisfied from the files, minutes, and records of the Court, and by proper evidence, that said record should now be amended nunc pro tunc as of the 8th day of September 1937, to read as follows, to wit:

"Now on this 8th day of September 1937, come the parties by their attorneys and the United States of America, Intervenor herein, files its petition asking that its claim be allowed and that
11 the Court find that the said claim is entitled to preference over all other claims. And the parties file, as of April 22nd, 1937, their stipulation of fact.

"The Court finds that there is due the Intervenor the sum of Five Thousand Nine Hundred Eighty-Eight Dollars and Eighty-Eight Cents ($5,988.88) principal, and the sum of Four Hundred Eleven Dollars and Seventy-Three Cents ($411.73) as interest, making a total of Six Thousand Four Hundred Dollars and Sixty-One Cents ($6,400.61), which should be allowed as an ordinary claim, but further finds that it should not be granted priority over the claims of the laborers in the distribution of the assets of the estate.

"Come now the parties and the United States of America files its motion for a new trial, and the motion is taken up and submitted to the Court, and having been by the Court duly considered it is overruled.

"It is therefore ordered and adjudged that the Intervenor, the United States of America, have and recover of the defendants the sum of Six Thousand Four Hundred Dollars and Sixty-One Cents ($6,400.61), principal and interest as aforesaid, and that it be allowed as an ordinary demand against said estate.

"It is the further order and judgment of the Court that the Intervenor's petition for a preference over the claims of the laborers be denied, and that the Intervenor take nothing by its prayer for priority in the payment of its claim and that the defendants and their receiver go hence without day.

"It is the further order and judgment of the Court that the receiver pay over to the common laborers the amounts set aside for them, together with their costs in this behalf laid out and expended, and have thereof execution.

"Come now the parties and the United States of America files its affidavit and pays to the Clerk the docket fee of $10.00, and prays for an appeal to the Supreme Court, on consideration of which it is by the Court ordered that an appeal be allowed.

"The United States of America is by the Court allowed to file its bill of exceptions on or before the next regular term of this Court."

The Court now orders that said record be so amended.

(Signed) WILLIAM E. BARTON,
Judge of the Circuit Court of Phelps County.

12 [Clerk's certificate to foregoing paper omitted in printing.]

14 In Supreme Court of Missouri, Division I

No. 36329

HARRY S. EMORY, RESPONDENT

vs.

ST. JAMES DISTILLERY, INC., A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS, UNITED STATES OF AMERICA, (INTERVENOR) APPELLANT

Notice of application to transfer cause to Springfield Court of Appeals

Filed Dec. 2, 1939

TO BREUER AND NORTHERN, *Attorneys of Record for Harry S. Emory, Respondent:*

Take notice that the motion of the appellant to transfer the appeal in the above entitled cause, from the Supreme Court of the State of Missouri to the Springfield Court of Appeals, will be filed in said Court and docketed for consideration on the 8th day of December A. D. 1939.

(Signed) HARRY C. BLANTON,
United States Attorney.

Dated at St. Louis, Missouri, this 1st day of December 1939.

Receipt of a copy of the within notice and the motion is acknowledged this 2d day of December 1939.

(Signed) BREUER & NORTHERN,
Attorneys for Respondent.

15 In Supreme Court of Missouri, Division I

[Title omitted]

Motion to transfer cause to Springfield Court of Appeals

Filed Dec. 2, 1939

Comes now the United States of America, by Harry C. Blanton, United States Attorney, within and for the Eastern Judicial District of Missouri, and moves the Court to transfer the appeal now pending in Division 1 of this Court to the Springfield Court of Appeals, and for cause thereof states:

1. That the amount involved in this case is Six Hundred and Seventy Eight Dollars ($678.00);

2. That the question involved is a question of priority in the distribution of said sum as the sole remaining assets of an insolvent corporation, the conflicting claims being those of the United States claiming priority under a Federal statute and laborers claiming priority under a State statute of the State of Missouri;

3. That at the time the appeal was taken from the judgment of the Circuit Court of Phelps County, it was the opinion of officers representing the appellant that the proper appellate jurisdiction was in the Supreme Court, but, upon reconsideration,
it is the opinion of the appellant that the appeal should
16 properly have been taken to the Springfield Court of Appeals of the State of Missouri;

4. That the printed record now on file in this Court discloses the above state of facts.

Wherefore, the appellant, United States of America, moves the Court to transfer the appeal to the Springfield Court of Appeals, because of lack of jurisdiction in this Court to hear said appeal.

(Signed) HARRY C. BLANTON,
United States Attorney.

18(1) In Supreme Court of Missouri

No. 36329

HARRY S. EMORY, RESPONDENT

vs.

ST. JAMES DISTILLERY, INC., A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS, UNITED STATES OF AMERICA (INTERVENOR), APPELLANT

Appeal From the Circuit Court of Phelps County, Missouri

Honorable WILLIAM E. BARTON, Judge.

Appellant's abstract of the record

Filed Dec. 5, 1939

Be It Remembered that heretofore, to wit, on the 27th day of August 1936, Harry S. Emory filed in the Circuit Court of Phelps County, Missouri, his petition against the defendants, asking that a Receiver be appointed to liquidate the assets of the St. James Distillery, Inc., a corporation, and the
St. James Distillery, a corporation, located at St.
18(2) James, Missouri, on which process was duly issued and

served on the defendants, and which petition is in words and figures, as follows, to wit (caption and signatures omitted):

Petition

Plaintiff states that defendant, St. James Distillery Incorporated, and defendant, St. James Distillery, are corporations organized and existing as such under and by virtue of the laws of the State of Missouri; that their chief office and place of business is in the City of St. James, Missouri; that said defendant St. James Distillery was originally incorporated on the 23rd day of May 1935, as the St. James Development Company, with a capital stock of Two Thousand Dollars, that it thereafterwards, on the 26th day of September 1935, increased its capital stock to Ten Thousand Dollars, and that on said date the name of the corporation was changed from St. James Development Company to St. James Distillery; that defendant St. James Distillery, Incorporated, was incorporated on the 26th day of November 1935, with an authorized capital stock of Two Hundred Fifty Thousand Dollars, divided into fifty thousand shares of common stock of the par value of Five Dollars per share; that of this authorized stock, there was subscribed but twenty thousand shares of the par value of One Hundred Thousand Dollars,

18(3) of which one E. A. Maynor was a subscriber to 19,800 shares, Felix Garnier, one hundred shares, and J. W. Weger, one hundred shares, as appears by the Articles of Incorporation; that the first board of directors were said stock holders, and all the stockholders, E. A. Maynor, Felix Garnier, and J. W. Weger; that said E. A. Maynor became the president of said corporation, and has continued to remain so up to this time; that he was and is likewise the president of the board of directors of the St. James Distillery, Incorporated, and its predecessor and the St. James Development Company.

Plaintiff further states that the declared object and purpose of defendant corporations, and each of them, was primarily to "manufacture, distill, rectify, blend, compound, and otherwise prepare for use such distilled spirits of grain, fruits, and all other alcohol beverages of whatever nature as may now or hereafter be permitted by law," and to do all other things necessary in that behalf.

Plaintiff further states that at all the times herein mentioned said E. A. Maynor was the chief organizer and promoter of said defendant corporations, and not only their president, but actively in charge of the business affairs of the corporations, the business manager and in unlimited control of the property and affairs of the corporations.

Plaintiff further states that there was issued to him a certificate for five shares of the capital stock of the St. James
18(4) Distillery, and that he has a just and valid claim for common labor to the amount of two hundred eighty one dollars against defendant, St. James Distillery, Incorporated, for common labor rendered and performed at the instance and request of defendant company, through its president and manager, the said E. A. Maynor, and that he brings this suit on behalf of himself and all other persons similarly situated who might or may join in this proceeding; and that he figures said suit as a stockholder and claimant, and for those similarly situated as stated, as provided by law.

Plaintiff further states that the defendants, through their president and manager, the said E. A. Maynor, are using said defendant corporations as a means of defrauding various persons, including this plaintiff, and others similarly situated, and that said E. A. Maynor and other directors of the corporations have violated their duties and abused their powers, as officers, directors, and trustees of said corporations, and have been guilty of gross misconduct, as will hereinafter be more particularly set forth, in the management of the business of the corporations, and are threatening, and in fact are wasting, conveying, cancelling, and disposing of the assets of the companies' property.

Plaintiff further states that the said E. A. Maynor, as the promoter, organizer, and incorporator of the defendant, St. James Distillery Company, and for the purpose of pro-
18(5) curing incorporation from the Secretary of the State of Missouri, fraudulent filed with said officer a false and fraudulent statement and affidavit setting forth the value of real estate and personal property represented to be held by the incorporators, showing a value of such property of One Hundred Thousand Dollars, which was the basis of the Twenty Thousand shares of stock issued as aforesaid, and which values so placed on said property, was grossly in excess of the value thereof, which said statement and affidavit was a fraud on the Secretary of State and designed to cheat, wrong and defraud this plaintiff and all other similarly stated, and the public generally.

Plaintiff further states that said statement and affidavit so made as aforesaid by the said E. A. Maynor represents to be also verified by J. W. Weger, whose name appears thereon, and which said affidavit was not so made by J. W. Weger, as represented by the said E. A. Maynor, but his name thereon was placed without his knowledge or consent, and is a forgery and a fraud.

Plaintiff further states that the said E. A. Maynor, as president of the corporations, and in control of its business affairs has

pretended to make purchases for and in behalf of the corporation and has caused fake and fraudulent bills to be rendered for purported sales which were never made and has and is under-
18(6) taking to use such methods as a means of converting the assets of the corporation to his own use and benefit, all in fraud to plaintiff and those similarly situated.

Plaintiff further states that said E. A. Maynor, as president of the corporation, and manager, as aforesaid, has been guilty of further mismanagement and misconduct, in this, that he took a lease on real estate adjoining companies' premises, known as the Pevely property, that after such lease had been taken and signed by the parties, the said E. A. Maynor fraudulently inserted in his copy of the lease and option to buy the premises for the sum of Five Thousand Dollars, which was materially less than the market value of the said real estate, and that he fraudulently used said forged instrument for the purpose of obtaining credit and funds which were converted to his own use.

Plaintiff further states that said E. A. Maynor, as president and business manager of defendant corporations, as aforesaid, and by means of his fraudulent lease aforesaid, and otherwise interested other parties in his project and development, who were from time to time advancing the corporations, through the said E. A. Maynor, large sums of money to carry on the building and developing of the distillery for which the corporation pretended to be organized for; that in this behalf said E. A. Maynor from time to time would exhibit to such parties a pay roll of
18(7) workmen, including this plaintiff, who were employed by the corporation as common laborers, showing that so much was due them for their labor, and that said Maynor would represent that he had paid such labor in full, and the amount thereof was refunded and repaid to said Maynor by such parties; but plaintiff says that although the said Maynor procured the necessary funds, as aforesaid, to pay for his labor and all others similarly situated, that said Maynor did not pay over said money to them, but fraudulently converted the same to his own use.

Plaintiff further states that the said E. A. Maynor, as president and manager of defendant corporations, as aforesaid, fraudulently procured from the United States Government a loan for large sums of money for improvements upon real estate not owned by the corporation and in fraud of the Government.

Plaintiff further says that the said E. A. Maynor as an officer and organizer of said corporations fraudulently issued or caused to be issued, certificates of stock in said corporations which were in fact never paid for.

Plaintiff further states that the property of defendant corporations has been so mismanaged, dissipated and wasted by the

said E. A. Maynor until the remaining total assets by the most liberal appraisement would not exceed the total value of Three Thousand Five Hundred Fifty-nine Dollars, and that there
18(8) are at this time determined claims or liabilities of Four Thousand One Fifty-four Dollars, and other claims and demands allowable, not included therein, and as a result defendant corporations are hopelessly insolvent.

Plaintiff further states that in addition to his claim for common labor there are a number of other laborers similariy situated who have like claims for labors, totaling Nine Hundred Thirty-nine Dollars, all of which labor has been performed within the statutory period, and are entitled to a preference and to be made a lien.

Plaintiff further states that of the known claims and demands, as aforesaid, ther eis due Pevely Dairy Company, for rent, Three Hundred Fifty Dollars, Lawton, Byrne, Bruner, for insurance, One Hundred Seven Dollars, and that the remainder of said claims are for material furnished for which material men's liens are allowable.

Plaintiff further states that the said E. A. Maynor has abandoned said corporations and property and has absconded and his whereabouts is unknown and is reputed to be a fugitive from justice as a result of his mismanagement, frauds and misconduct in connection with the affairs of defendant corporations, and has abandoned all assets of the company and same is being dissipated and destroyed.

Plaintiff further states that he and those similarly situated have no adequate, or in fact, any remedy at law; that by reason of the insolvency of the company, and the allowing of
18(9) material men's liens, which are now in the process of being filed, and by reason of the fact the real estate of the corporations is incumbered, a judgment against said defendant corporations would be altogether worthless and unavailing, by reason of the facts aforesaid, and the further fact that much of the assets of the property would be wholly worthless unless used for the purpose procured and designed, and plaintiff says that if a receiver is appointed by this Court to take over the property and affairs of defendant corporations that he will be able to so dispose of the assets of the corporations at private sale in a manner and for a price sufficient to pay all of a substantial portion of plaintiff's claim and all others so situated which would be utterly impossible at any judicial sale under execution.

Plaintiff further states that an extraordinary condition obtains in this case, that an emergency exists and the property and assets will be entirely dissipated and destroyed by reason of the aban-

donment of the property and absconding of the said E. A. Maynor, unless a receiver be so appointed by the Court.

Wherefore, plaintiff prays that the said E. A. Maynor and all other directors, managers and officers of defendant corporations be compelled to account for their official conduct in the management and disposition of the funds, property and business of said corporation, that the Court order and decree the pay-
18(10) ment by them to the company or any receiver appointed therefor, of any sums of money and the value of the property which may have been acquired by themselves or transferred to others, or lost or wasted by the violation of their duties and the abuse of their power as such directors and officers, and that said directors and officers be suspended and restrained from exercising their offices, and that a receiver be appointed to take charge of all the property of defendant corporations both real and personal, owned, held or claimed by defendant corporations, to account for the same to the persons who may be found entitled thereto; dispose of such property, both real and personal, by order and direction of the Court, and to pay out the proceeds thereof to those entitled thereto as may be ordered by the Court; and that said corporations and their officers, and each of them, be restrained and enjoined from conveying, transferring or alienating any of the property, assets or effects of said defendant corporations to any person whatever, and that he may have judgment for his demand of two hundred eighty one dollars, and the same be paid to him by the receiver out of the funds derived from the assets of said company, and that said claim be made a preference and a lien against the property of the defendant, and for such other and further relief in the premises as plaintiff, and those who might join in this action, might be entitled to in equity and good conscience, and for general relief in the premises.

BREUER & NORTHERN,
Attorneys for Plaintiff.

18(11) *Appointment of receiver*

Thereafter, to wit, on the 9th day of September 1936, Court being opened in due form, the following among other proceedings were had in this cause, to wit (caption omitted):

Now, on this day, this cause coming on to be heard, and the plaintiff herein appearing in person and by counsel, and the defendant, St. James Distillery, Incorporated, appearing by Joseph P. McGowan, Secretary and Treasurer of said defendant company, and defendant, St. James Distillery, a Corporation, likewise appearing by said Joseph P. McGowan, he being in charge

of the office, principal place of business and the affairs of both defendant corporations, and it appearing to the Court that due process had been served upon said defendants notifying them of the pendency of this proceeding, and at the time of the hearing thereon, the Court proceeded to hear the testimony and argument of counsel, and thereupon, the Court doth order, adjudge and decree as follows:

First. The Court doth find the issues for the plaintiff, Harry S. Emory, and that he has a just claim and demand for the sum of Two Hundred Eighty-one Dollars, and doth order and decree that an injunction and restraining order be issued herein. And that the defendants, St. James Distillery, Incorporated, a Corporation, and St. James Distillery, a Corporation, and
18(12) then directors, officers and agents, be, and the same are, hereby forever restrained and enjoined from conveying, transferring or alienating any of the property, assets, or affects of said defendant companies to any person whatever, or from in anywise or to any extent controlling or attempting to exercise any control whatever over any books, accounts, property or assets of said defendant companies.

Second. The Court doth order and decree that W. D. Jones be, and he is, hereby appointed receiver of all of the property and assets of said St. James Distillery, Incorporated, and St. James Distillery, and the said receiver, or his successor, is hereby authorized to take charge and possession of all of the books, accounts, property, real and personal, belonging to said defendants, and to account for the same to the Court for the benefit of the creditors and shareholders of corporations, and to preserve and keep them until duly ordered sold by the Court, and all said property of said defendant companies is hereby vested in said W. D. Jones, Receiver, or his successor, and the Court doth further order and decree that said W. D. Jones shall duly qualify as such receiver within fifteen days from this date by filing his bond as such receiver, in the sum of Two Thousand Five Hundred Dollars, and that failing so to do, a vacancy in such receivership shall exist to be filled in vacation on motion of either party or the Judge of the Court; and said Receiver is hereby
18(13) ordered to make immediate report and file a schedule of all the properties and assets of said company as soon as he shall take possession of the same, and further obey such order of the Court touching the premises as the Court shall make from time to time, in term, or vacation.

Third. The Court doth order, decree and adjudge that the plaintiff have and recover his costs herein laid out and expenses

against the said St. James Distillery Incorporated and St. James Distillery.

Fourth. The Court doth find the issues for the plaintiff, Harry S. Emory, and that his claim and demand is a debt for wages due and common labor rendered as an employee of defendant corporations, and for and in their behalf. And that such demand is entitled to a priority of payment from the money and assets of the corporations in the hands of the receiver, and the Court doth further order, decree and adjudge that said plaintiff be, and he is, hereby declared a creditor of said defendant corporations with a right to a preference in the sum of Two Hundred Eighty-one Dollars, and that his debt shall be paid out of the funds in the hands of the receiver, on the further order of this Court for the payment of creditors.

Thereafter, to wit, on September 8th, 1937, the Federal Housing Administrator, acting for and in behalf of the United States, duly filed within the prescribed period in such cases made
18(14) and provided, its verified petition for the allowance of its claim against the defendants, and for the granting of a priority of said claim by reason of Section 3466, Revised Statutes of the United States (Section 191, Title 31, U. S. C.), said verified petition being in words and figures as follows, to wit (signatures omitted):

In the Circuit Court of Phelps County, State of Missouri
September Term, 1936

HARRY S. EMORY, PLAINTIFF

vs.

ST. JAMES DISTILLERY, INC., A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS

STATE OF MISSOURI,
County of Phelps, ss:

Claim of the United States of America, by and through Stewart McDonald, Federal Housing Administrator, against the St. James Distillery, Inc., a corporation, and St. James Distillery, a corporation, and W. B. Jones, receiver of Said corporations

Comes now Stewart McDonald, Federal Housing Administrator, by and through his authorized Agent, Thomas G. Mullally, District Director for the Eastern District of Missouri, and acting in his representative capacity for and on behalf of the United States of America, files this, his claim, against the above named company and its said Receiver.

Claimant states than on September 23, 1935, defendant corporation made and entered into a promissory note in the
18(15) amount of $7,481.78, said note being payable to the Industrial Bank & Trust Company of St. Louis, Missouri, in fifty nine payments of One Hundred Twenty Four Dollars and seventy cents ($124.70) and one payment of One Hundred Twenty Four Dollars and forty eight cents ($124.48). That said note was duly signed by St. James Distillery, per E. A. Maynor, Pres.; that only Three Hundred Seventy-five Dollars ($375.00) in regular installments was paid on said note by said defendant; and that said note was duly assigned to claimant by the Industrial Bank & Trust Company, for which assignment claimant, under a contract of Insurance and Guaranty, paid said Industrial Bank & Trust Company the sum of Five Thousand Nine Hundred Eighty-eight Dollars and eighty-eight cents ($5,988.88) on July 14, 1936.

Claimant further states that said moneys of the United States were lawfully expended and said debt is now legally owing to the United States in accordance with Title I of the National Housing Act (Public, No. 479—73rd Congress) (H. R. 9620), approved June 27, 1934, and amendments thereto.

Claimant further states that demand was made for full payment of this note of defendant corporation prior to the filing of action in this Court, but that no part of said claim has been paid and that same is now due and payable, together with interest, at the rate of six percent (6%) from July 14, 1936, in the amount of Two Hundred Twenty-one Dollars and sixty-five
18(16) cents ($221.65) to February 15, 1937, for a total amount due and payable of Six Thousand Two Hundred Ten Dollars and fifty-three cents ($6,210.53) as of February 15, 1937.

Claimant further states that this claim is entitled to priority in payment over and above all other claims under and by virtue of Section 191, Title 31, United States Code, and that assets are available for immediate payment of this claim.

Wherefore, the premises considered, claimant moves and prays that the Court order the above claim allowed as a claim having priority over all other claims and liabilities of the receivership estate, and that an order issued out of this Court authorizing said receiver to pay the foregoing claim forthwith, together with interest, as above set forth.

THOMAS G. MULLALLY,

District Director, Federal Housing Administration; Authorized Agent of Stewart McDonald, Federal Housing Administrator.

STATE OF MISSOURI,
City of St. Louis, ss:

On this 17th day of February 1937, personally appeared before me Thomas G. Mullally, known to me to be District Director of the Federal Housing Administration for the Eastern District of Missouri, and authorized Agent of Stewart McDonald, Federal Housing Administrator, acting on behalf of the United States of America, who did state that he has read the
18(17) statement of claim attached hereto and that said statement is true and correct to the best of his knowledge and belief.

———, *Notary Public.*

My Commission Expires ——.

Trial and findings of court

Thereafter, to wit, on the 8th day of September 1937, the same being one of the days of the regular September Term, 1937, of the Circuit Court of Phelps County, Missouri, both parties announced ready for trial and the case was submitted to the Court on the agreed statement of facts:

Thereafter, on the same day, to wit, September 8th, 1937, the Court announced and rendered its findings in favor of the Receiver and against the Federal Housing Administrator, acting for and on behalf of the United States, which said finding was as follows, to wit (caption omitted):

"All the facts being seen, heard, and fully understood, the Court did overrule the motion for preference of the Federal Housing Administration.

"It is therefore considered by the Court that the said Federal Housing Administration take nothing by its said motion and that the Receiver pay over to the common laborers the amount set aside for them together with all costs in this behalf laid out and expended and have thereof execution."

18(18) *Motion for new trial*

To which said finding the Federal Housing Administration, acting for and on behalf of the United States, then and there excepted and objected and still excepts and objects, and thereafter on the same day, to wit, the 8th day of September 1937, and during the said term, to wit, the September Term, 1937, of said Circuit Court of Phelps County, Missouri, and within four days after the finding of the Court in this cause, the appellant filed its motion for a new trial in said cause.

Motion for a new trial overruled

Thereafter, said motion for a new trial was by the Court overruled, to which action of the Court the Federal Housing Administrator, acting for and in behalf of the United States of America, objected and excepted, and still objects and excepts.

Thereafter, to wit, on June 19th, 1939, the United States made application for an amendment of the record, which was duly served upon opposing counsel, said application being in words and figures as follows, to wit (caption and signatures omitted):

Application for amendment of record

Now on this day comes the United States of America, Intervenor herein, and shows to the Court that in the record, as entered in the above entitled cause by the Clerk on the
18(19) 8th day of September 1937, the same being the third day of the regular September Term of the Circuit Court of Phelps County, there appears the following recitals:

"Now at this day comes the Federal Housing Administration and files their petition for preference in the said cause. And having filed their stipulation as to facts filed as of April 22, 1937, upon which the Court bases its judgment in said cause and all the facts being seen, heard and fully understood, the Court doth overrule the motion for preference of the Federal Housing Administration.

"It is therefore considered by the Court that the said Federal Housing Administration take nothing by its said motion and that the receiver pay over to the common laborers the amount set aside for them together with all costs in this behalf laid out and expended and have thereof execution.

"And on the same day and date the following entry also appears of record:

* * * * *

"Motion for new trial heretofore filed upon being taken up and argued if by the Court overruled.

"And on the same day and date the following entry also appears of record:

* * * * *

"Affidavit for appeal filed, and appeal allowed to the Supreme Court of the State of Missouri.

18(20) "And on the same day and date the following entry also appears of record:

* * * * *

"The Federal Housing Administration is by the Court allowed to file Bill of Exceptions at or before the next regular term of this Court, and docket fee of ten dollars paid in open court."

Intervenor further shows to the Court that the recital of the proceedings on said day should have contained a record entry that the claim of Intervenor was allowed as a common claim.

Intervenor further shows to the Court that the full record entry reciting the proceedings on said day, as appears from the minutes, files and records of the Court, should have been in the following form:

"Now on this 8th day of September 1937, come the parties by their attorneys and the United States of America, Intervenor herein, files its petition asking that its claim be allowed and that the Court find that the said claim is entitled to preference over all other claims. And the parties file, as of April 22nd, 1937, their stipulation of fact.

"The Court finds that there is due the Intervenor the sum of Five Thousand Nine Hundred Eighty-Eight Dollars and Eighty-Eight Cents ($5,988.88) principal, and the sum of Four Hundred Eleven Dollars and Seventy-Three Cents ($411.73)
18(21) as interest, making a total of Six Thousand Four Hundred Dollars and Sixty-One Cents ($6,400.61), which should be allowed as an ordinary claim, but further finds that it should not be granted priority over the claims of the laborers in the distribution of the assets of the estate.

"Come now the parties and the United States of America files its motion for a new trial, and the motion is taken up and submitted to the Court, and having been by the Court duly considered it is overruled.

"It is therefore ordered and adjudged that the Intervenor, the United States of America, have and recover of the defendants the sum of Six Thousand Four Hundred Dollars and Sixty-One Cents ($6,400.61), principal and interest as aforesaid, and that it be allowed as an ordinary demand against said estate.

"It is the further order and judgment of the Court that the Intervenor's petition for a preference over the claims of the laborers be denied, and that the Intervenor take nothing by its prayer for priority in the payment of its claim and that the defendants and their receiver go hence without day.

"It is the further order and judgment of the Court that the receiver pay over to the common laborers the amounts set aside for them, together with their costs in this behalf laid out and expended, and have thereof execution.

"Come now the parties and the United States of America files its affidavit and pays to the Clerk the docket fee of $10.00, and

18(22) prays for an appeal to the Supreme Court, on consideration of which it is by the Court ordered that an appeal be allowed.

"The United States of America is by the Court allowed to file its bill of exceptions on or before the next regular term of this Court."

Wherefore, the Intervenor now moves the Court that the said record entry be corrected and amended in the said particulars, and entered nunc pro tunc to show the above facts.

Judgment nunc pro tunc and the granting of an appeal

Thereafter, to wit: on June 19, 1939, the Circuit Court of Phelps County entered Judgment Nunc Pro Tunc as of September 8th, 1937, in words and figures as follows, omitting captions.

"And Intervenor moves that said record entry be corrected and amended, and entered nunc pro tunc in order to show the said facts.

"And said motion having been heard, and due notice thereof having been waived by the parties herein, and the Court being satisfied from the files, minutes and records of the Court, and by proper evidence, that said record should now be amended nunc pro tunc as of the 8th day of September 1937, to read as follows, to wit:

"'HEARING

"'Now on this 8th day of September 1937, come the
18(23) parties by their attorneys and the United States of America, Intervenor herein, files its petition asking that its claim be allowed and that the Court find that the said claim is entitled to preference over all other claims. And the parties file, as of April 22nd, 1937, their stipulation of fact.

"'FINDINGS

"'The Court finds that there is due the Intervenor the sum of Five Thousand Nine Hundred Eighty-Eight Dollars and Eighty-Eight Cents ($5,988.88) principal, and the sum of Four Hundred Eleven Dollars and Seventy-Three Cents ($411.73) as interest, making a total of Six Thousand Four Hundred Dollars and Sixty-One Cents ($6,400.61), which should be allowed as an ordinary claim, but further finds that it should not be granted priority over the claims of the laborers in the distribution of the assets of the estate.

"'MOTION FOR A NEW TRIAL

"'Come now the parties and the United States of America files its motion for a new trial, and the motion is taken up and submitted to the Court, and having been by the Court duly considered it is overruled

"'JUDGMENT

"'It is therefore ordered and adjudged that the Inter-
18(24) venor, the United States of America, have and recover of the defendants the sum of Six Thousand Four Hundred Dollars and Sixty-One Cents ($6,400.61), principal and interest as aforesaid, and that it be allowed as an ordinary demand against said estate.

"'It is the further order and judgment of the Court that the Intervenor's petition for a preference over the claims of the laborers be denied, and that the Intervenor take nothing by its prayer for priority in the payment of its claim and that the defendants and their receiver go hence without day.

"'It is the further order and judgment of the Court that the receiver pay over to the common laborers the amounts set aside for them, together with their costs in this behalf laid out and expended, and have thereof execution.

"'APPEAL GRANTED

"'Come now the parties and the United States of America files its affidavit and pays to the Clerk the docket fee of $10.00 and prays for an appeal to the Supreme Court, on consideration of which it is by the Court ordered that an appeal be allowed.

"'The United States of America is by the Court allowed to file its bill of exceptions on or before the next regular term of this Court.'

18(25) "The Court now orders that said record be so amended.

"(Signed) WILLIAM E. BARTON,
"*Judge of the Circuit Court of Phelps County.*"

Approved as to form.

L. H. BREUER.

Bill of exceptions filed

And thereafter, on the 20th day of August 1938, and within the time allowed by the law for the filing of its Bill of Exceptions, the appellant filed with the Clerk of the Circuit Court of Phelps County, Missouri, its said Bill of Exceptions herein, the

same having been on the 20th day of August 1938, examined, approved, signed, sealed and ordered filed by the Judge of said Court, and made a part of the record in this cause, which said Bill of Exceptions (caption omitted) is as follows:

18(26) *Bill of exceptions*

Hearing of petition

Be it remembered that this cause coming on to be heard in the above entitled Court, on September 8th, 1937, same being the third day of the regular September Term, 1937, of the Circuit Court of Phelps County, Missouri, before Honorable William E. Barton, the regular Judge of said Court, the following among other proceedings were had.

The evidence consisted of an agreed statement of facts, which was duly filed, and which was considered by the Court as the evidence in this case. The agreed statement of facts is as follows (caption and signature omitted):

Stipulation of facts

It is hereby stipulated and agreed by and between the United States of America, by and through its duly appointed and authorized attorneys, and W. D. Jones, Receiver for the St. James Distillery, Inc., a Corporation, and the St. James Distillery, a Corporation, that this cause shall be presented to the Court, a jury being hereby waived, and that the matters here involved be presented to the Court by a Stipulation of Facts; and it is hereby stipulated and agreed that the facts concerning this case are as follows:

18(27) That the St. James Distillery is a Corporation, and is located at St. James, Phelps County, Missouri.

That the St. James Distillery was hopelessly insolvent on or before August 1936, and was unable to pay its debts; that the said Distillery has been insolvent since that date, and is still insolvent; that a petition was filed on August 27, 1936, under Section 4960, Revised Statutes of Missouri, 1929, asking that a Receiver be appointed to liquidate the assets of the insolvent Corporation.

That, in accordance with that petition, the Judge of the Circuit Court of Phelps County did, on the 9th day of September 1936, appoint W. D. Jones of Bolla, Phelps County, Missouri, as Receiver of the St. James Distillery; that the said W. D. Jones, after furnishing bond and fulfilling all requirements and qualifications, entered upon his duties as said Receiver, and has so acted since that day, and is still so acting.

That the Receiver sold the property, which comprised the Distillery proper, and received from that sale the sum of One Thousand and No-100 Dollars ($1,000.00) which, it is submitted, represented the entire assets of the insolvent Corporation.

That claims were duly filed against the insolvent Corporation, and are before this Court for its consideration.

That among the claims were certain labor claims totaling about Nine Hundred and No-100 Dollars ($900.00), and
18(28) representing the claims of about twelve individuals who had done common labor for the St. James Distillery. These individuals claim a preference by reason of Section 1168, Revised Statutes of Missouri, 1929.

That there was also duly filed by the United States of America on behalf of the Federal Housing Administration, a claim in which a priority was claimed by the United States under and by virtue of Section 3466, Revised Statutes of the United States (Title 31, U. S. C. A., 191). This claim was based on a note duly executed by the insolvent debtor Corporation, and made payable to the Industrial Bank and Trust Company of St. Louis. It was dated September 23, 1935, and was in the amount of Seven Thousand Four Hundred Eighty One and 78-100 Dollars ($7,481.78). The said note was on July 14, 1936, endorsed and delivered to the Federal Housing Administration, acting for and on behalf of the United States of America, and the United States of America, through the Federal Housing Administration, on that date reimbursed the Industrial Bank and Trust Company in the amount of Five Thousand Nine Hundred Eighty Eight and 88-100 Dollars ($5,988.88), the balance due on the said note, and the United States of America, through the Federal Housing Administration, is the present holder of the said note. The claim of the United States on this note was for Five Thousand Nine Hundred Eighty Eight and
18(29) 88-100 Dollars ($5,988.88), with interest from and after the 14th day of July 1936, and it is on this indebtedness that a priority is claimed on behalf of the United States, over and above all other creditors.

The Circuit Court permitted the Receiver to make disbursements totaling about Three Hundred Twenty Two and 00-100 Dollars ($322.00), being used entirely to pay the costs of the receivership. The total assets before the Court for distribution are about Six Hundred Seventy Eight and No-100 Dollars ($678.00).

Finding and judgment

Now on this 8th day of September 1937 while the Court was still in session, and during the regular September Term, 1937,

of said Court, the Court announced and rendered his verdict and judgment herein against the United States of America, and overruling the petition of the United States of America, acting through the Federal Housing Administration, for a preference, to which ruling of the Court the United States of America then and there objected and excepted and still objects and excepts.

Thereafter, on the same day, to wit, September 8th, 1937, the United States of America filed its motion for a new trial in this cause, which said motion is in words and figures as follows (caption and signatures omitted):

18(30) *Motion of the United States for a new trial*

Now comes the United States of America by Marshall Craig, Assistant United States Attorney for the Eastern District of Missouri, and moves the Court to set aside its finding and order heretofore entered herein on the 8th day of September A. D. 1937, in the matter of the allowance of the United States for a preference in the above-entitled proceeding, and to grant claimant a new trial herein for the following reasons:

I

Because the finding and order of the Court upon the record herein are erroneous and against the law applicable to claimant's demand.

II

Because the finding and order of the Court herein are contrary to and in disregard of the terms and provisions of Sections 3466 and 3467 of the Revised Statutes of the United States (Sections 191 and 192, Title 31, U. S. C.), which statutes are applicable to the allowance of claimant's demand herein and binding upon this Court.

III

Because the finding and order herein are contrary to the adjudicated cases construing the Federal Statutes hereinabove mentioned.

18(31) IV

Because the finding and order herein are against the undisputed evidence and facts herein.

V

Because the allowance of claimant's demand as a so-called "Preferred" Claim, but placing the claim thus allowed upon a basis for payment equal with the claims and demands of other creditors of said Corporation arising since the insolvency thereof, has the effect of allowing the Government's claim only as a common one, since the admitted assets of said Corporation are insufficient to pay all of the so-called "Preferred" Claims in full.

VI

Because the Court erred in failing to find that, under the law and facts herein, the Government's claim is entitled to be allowed and paid out of the assets of said Corporation prior to and in preference of the claims and demands of other creditors.

Motion for new trial overruled

Thereafter, on the 13th day of April 1938, the United States of America's motion for a new trial being called up, the same is seen, heard, and examined by the Court, and on said day by the Court overruled, to which action in overruling said motion for a new trial, defendants then and there objected and excepted and still object and except.

18(32) *Final judgment*

Whereupon, judgment was rendered against the claim of the United States, and the motion of the United States seeking a preference was overruled.

Appeal granted

And thereafter, on the same day, that is, the 13th day of April 1938, and while the Court was in session, and during the same term at which the motion for a new trial herein was overruled plaintiff filed its affidavit for appeal in due form.

And thereafter, on the same day, to wit, April 13th, 1938, the Court by its order duly entered of record, granted the United States of America's said application for an appeal, and the appeal was granted in this cause to the Supreme Court of the State of Missouri, and the United States of America was granted until the 1st day of the next term of Court within which to file its Bill of Exceptions.

Judge's certificate

And now, within the time allowed by law, and the order of the Court comes the United States of America, and presents this its Bill of Exceptions herein containing the transcript of the proceedings herein, matters, things, and rulings of the Court, and the evidence presented, and prays the Court to sign this said Bill of Exceptions, and order the same filed and made a part
18(33) of the record of this cause, which is accordingly done this 20th day of August 1938.

WM. E. BARTON,
Judge of the Circuit Court of Phelps County, Missouri.

Approved:
HARRY C. BLANTON,
United States Attorney,
MARSHALL CRAIG,
Assistant United States Attorney.
Attorneys for Plaintiff.
BREUER & NORTHERN,
Attorneys for Trustee.

This constitutes all the record in the case necessary to a consideration of the appeal in this case as required by the rules of the Court.

Respectfully submitted.

HARRY C. BLANTON,
United States Attorney,
MARSHALL CRAIG,
Former Assistant United States Attorney,
RUSSELL VANDIVORT,
Assistant United States Attorney,
Attorneys for Appellant.

19 In the Springfield Court of Appeals

No. 6171

HARRY S. EMORY, RESPONDENT

vs.

ST. JAMES DISTILLERY, INCORPORATED, A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS, UNITED STATES OF AMERICA (INTERVENOR), APPELLANT

Order setting cause for hearing

And that the above-entitled cause was placed for hearing on the Springfield Docket of the March 1940, Term of the Springfield Court of Appeals.

21 1) In Springfield Court of Appeals

No. 6171

HARRY S. EMORY, RESPONDENT

vs.

ST. JAMES DISTILLERY, INCORPORATED, A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS, UNITED STATES OF AMERICA (INTERVENOR), APPELLANT

Appeal from the Circuit Court of Phelps County, Missouri

Appellant's statement, brief, and argument

Filed Feb. 6, 1940

21(5) *Assignments of error*

The United States assigns as error the action of the trial court:

1. In finding that the claim of the United States should not be granted priority over the claims of the laborers in the distribution of the assets of the estate.

2. In entering judgment that the petition of the United States for a preference over the claims of the laborers be denied.

3. In entering judgment that the United States take nothing by its prayer for priority in the payment of its claim.

4. In entering its order and judgment that the receiver pay over to the common laborers the amounts set aside for them, together with their costs.

5. In overruling appellant's motion for a new trial.

23 In the Springfield Court of Appeals

No. 6171

[Title omitted.]

Stipulation re continuance

Filed Feb. 22, 1940

It is hereby stipulated and agreed by and between the parties in the above-entitled matter that the above-named cause be continued to the next setting of the docket.

(Signed) HARRY C. BLANTON,
Appellant.
(Signed) BREUER & NORTHERN,
Respondent.

24 In Springfield Court of Appeals

Order resetting cause

March 7, 1940

Now at this day it is ordered by the Court that the aforesaid cause be and the same is hereby reset for the June Call.

26(1) *Respondent's statement, brief, and argument*

[Omitted in printing.]

27 In Springfield Court of Appeals

Minute entry of argument and submission

June 11, 1940

Now again comes the appellant aforesaid, by its attorneys, and after argument herein submits this cause to the Court, and the said respondent and his attorneys failing to appear when called, this cause is taken as submitted by respondent upon brief.

28 In Springfield Court of Appeals

Judgment

Aug. 22, 1940

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and

concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Circuit Court of Phelps County be in all things affirmed and stand in full force and effect, and that the said respondent recover of the said appellant costs and charges herein expended, and have execution therefor.

Opinion filed.

29 In Springfield Court of Appeals

March Term, 1940

No. 6171

HARRY S. EMORY, RESPONDENT

vs.

ST. JAMES DISTILLERY, INC., A CORPORATION, AND ST. JAMES DISTILLERY, A CORPORATION, DEFENDANTS, UNITED STATES OF AMERICA (INTERVENOR), APPELLANT

Appeal from the Circuit Court of Phelps County, Mo.

Hon. WILLIAM E. BARTON, Judge.

Harry C. Blanton, Sikeston, Mo., United States Attorney; Marshall Craig, Charleston, Mo., Former Assistant United States Attorney; Russell Vandivort, Cape Girardeau, Mo., Assistant United States Attorney, Attorneys for Appellant. Breuer & Northern, Rolla, Mo., Attorneys for Respondent.

Affirmed.

Opinion

Filed Aug. 22, 1940

W. D. TATLOW, P. J.

This case was appealed to the Supreme Court of the State, and by that court transferred here on the motion of appellant without an opinion.

I

There is no point made on the pleadings. The case was tried on an agreed statement of facts, which is in words and figures as follows:

"It is hereby stipulated and agreed by and between the United States of America, by and through its duly appointed and authorized attorneys, and W. D. Jones, Receiver for the St. James Distillery, Inc., a Corporation, and the St. James Distillery, a

Corporation, that this cause shall be presented to the Court, a jury being hereby waived, and that the matters here involved be presented to the Court by a Stipulation of Facts; and it is hereby stipulated and agreed that the facts concerning this case are as follows:

"That the St. James Distillery is a Corporation, and is located at St. James, Phelps County, Missouri.

"That the St. James Distillery was hopelessly insolvent on or before August 1936, and was unable to pay its debts; that the said Distillery has been insolvent since that date, and is still insolvent; that a petition was filed on August 27, 1936, under Section 4960, Revised Statutes of Missouri, 1929, asking that a Receiver be appointed to liquidate the assets of the insolvent Corporation.

"That, in accordance with that petition, the Judge of the Circuit Court of Phelps County did, on the 9th day of September 1936, appoint W. D. Jones of Rolla, Phelps County, Missouri, as Receiver of the St. James Distillery; that the said W. D. Jones, after furnishing bond and fulfilling all requirements and qualifications, entered upon his duties as said Receiver, and has so acted since that day, and is still so acting.

"That the Receiver sold the property, which comprised the Distillery proper, and received from that sale the sum of One Thousand and No-100 Dollars ($1,000.00) which, it is submitted, represented the entire assets of the insolvent Corporation.

"That claims were duly filed against the insolvent Corporation, and are before this Court for its consideration.

"That among the claims were certain labor claims totaling about Nine Hundred and No-100 Dollars ($900.00), and representing the claims of about twelve individuals who had done common labor for the St. James Distillery. These individuals claim a preference by reason of Section 1168, Revised Statutes of Missouri, 1929.

"That there was also duly filed by the United States of America on behalf of the Federal Housing Administration, a claim in which a priority was claimed by the United States under and by virtue of Section 3466, Revised Statutes of the United States (Title 31, U. S. C. A., 191). This claim was based on a note duly executed by the insolvent debtor Corporation, and made payable to the Industrial Bank and Trust Company of St. Louis. It was dated September 23, 1935, and was in the amount of Seven Thousand Four Hundred Eighty One and 78-100 Dollars ($7,481.78). The said note was on July 14, 1936, endorsed and delivered to the Federal Housing Administration, acting for and on behalf of the United States of America, and the United States

of America, through the Federal Housing Administration, on that date reimbursed the Industrial Bank and Trust Company in the amount of Five Thousand Nine Hundred Eighty Eight and 88-100 Dollars ($5,988.88), the balance due on the said note, and the United States of America, through the Federal Housing Administration, is the present holder of the said note. The claim of the United States on this note was for Five Thousand Nine Hundred Eighty Eight and 88-100 Dollars ($5,988.88), with interest from and after the 14th day of July 1936, and it is on this indebtedness that a priority is claimed on behalf of the United States, over and above all other creditors.

"The Circuit Court permitted the Receiver to make disbursements totaling about Three Hundred Twenty Two and 00-100 Dollars ($322.00), being used entirely to pay the costs of the receivership. The total assets before the Court for distribution are about Six Hundred Eight and No-100 Dollars ($678.00)."

The judgment of the court allowed the claim of the Government only as a general claim against the assets of the said estate, and subject to the claims of the laborers.

The assignments of error are, in substance, that the court erred in not granting priority to the United States for the debt due it over the claims of laborers in the distribution of the assets of the estate.

From the agreed statement, it appears that the insolvency occurred on or before August 1936; that the receivership petition was filed on August 27th, 1936, praying for the appointment of a receiver to liquidate the assets of the corporation; and that the receiver was appointed on the 9th day of September 1936, and duly qualified and took possession of the property of the insolvent corporation.

The United States acquired the note on which it asserts priority, on July 14th, 1936, before the appointment of the receiver, and the balance due thereon is largely in excess of the entire assets of the insolvent corporation. The claims due the laborers aggregate about $900.00 and are also in excess of the assets of the insolvent corporation, which amount to only about $678.00.

32 II

The respondent insists that a Federal question is involved and the case should be sent back to the Supreme Court.

Even if we agreed with this contention (which we do not), we would be concluded by the order of the Supreme Court transferring the case here.

It is perfectly plain that there is nothing in the contention. The Missouri Constitution confers upon the Supreme Court jurisdiction "of cases where the validity of a * * * statute of * * * the United States is drawn in question". Under this provision, the validity of the statute must be drawn in question and it is not sufficient to confer jurisdiction on that court that the construction of a Federal statute is required. Livestock Commission Co. v. C. M. & St. Paul Ry., 157 Mo. 518, 57 S. W. 1070; Hohlstein v. Roofing Co., 328 Mo. 899, l. c. 908, 42 S. W. (2d) 573.

III

The Supreme Court of the United States in several recent cases has held that the note acquired by the United States by assignment to the Federal Housing Administrator as its instrumentality or agent, before the appointment of the receiver, is a debt due it which is preferred under Section 3466, Revised Statutes of the United States. Section 191, Title 31, U. S. Code Annotated; Graves v. N. Y., 306 U. S. 466, 477; Pittman v. Home Owners' Loan Corp. 308 U. S. 21, 32, 33; United States v. Summerlin, decided May 27, 1940, 84 L. Ed. Ad. Sheet No. 16, pp. 963, 966.

The power of the Congress of the United States to give preference to the debts of the Government of the United States even over those of the several states, and of all other persons is very clearly stated in numerous cases by the Supreme Court of the United States. It is equally true that the acts of Congress prevail over the state statutes. These rules have been announced in numerous cases. Lane County v. Oregon, 7 Wall, 71, 19 L. 101; County of Spokane v. United States, 278 U. S. 80, 95, 73 L. 621. People of the State of New York v. Maclay, et al, 288 U. S. 290, 294, 77 L. 754. United States v. Knott, State Treasurer, 298 U. S. 544, 552, 80 L. 1321.

It is also well settled that a mere inchoate lien is not enough to defeat the priority granted the United States by the statute supra. United States v. Knott, 298 U. S. 544, 80 L. 1321. New York v. Maclay, 288 U. S. 290, 77 L. 754. Spokane County v. United States, 279 U. S. 80, 73 L. 621.

Under these authorities it is perfectly plain beyond any possible doubt that the United States is given priority over any and all debts or other claims whose priority is based solely on a state statute that does not create a completed and perfected lien before insolvency intervenes.

In the instant case the priority of the laborers' claims must be and is based on the state statute as to all debts except those due

the United States. The priority, if any, that such labor claims may have over the debt due the United States, must be determined by the state statute and by whether it is in conflict with the statutes of the United States, as construed by the Supreme Court of the United States. In order for such claims to have priority over the debt due the United States they must come within both statutes.

There are two cases decided by the Supreme Court of the United States in which, while the facts are entirely different, the line of reasoning employed in arriving at the conclusion would seem to be decisive of the instant case. The first case is Brainwell v. U. S. F. & G. Co., 269 U. S. 483, 492, 70 L. 368, where, among other things, it is said:

34 "The specified ways in which insolvency may be manifested include all cases in which an insolvent debtor makes an assignment of his property; there is no exception, and no regard is had to the purpose or manner of the assignment; and they include all cases in which an act of bankruptcy is committed under the laws of a state or under a national bankruptcy law. * * *." (l. c. 489).

"* * *. The priority given does not depend on any proceeding under the bankruptcy laws of state or nation. There is nothing in the language of the section, and no reason has been suggested, to indicate a purpose to give priority in the case of a debt due the United States from a debtor subject to the Bankruptcy Act and to deny priority, under like circumstances, when the debt is due from an insolvent bank or other debtor to whom the act does not apply. * * *. The generality of the language is significant. * * *." (l. c. 490).

A late decision of the Supreme Court dealing with this question is: U. S. v. Marxen, 307 U. S. 200, 208, 83 L. 1222. In this case the note was acquired by the United States after bankruptcy, and, for this reason, priority was denied.

"* * *. Section 3466 of the Revised Statutes, the basis for the claimed priority, provides that 'Whenever any person indebted to the United States is insolvent * * * the debts due to the United States shall be first satisfied; and the priority hereby established shall extend * * * to cases in which an act of bankruptcy is committed.' * * *. (l. c. 203).

* * * * *

"* * *. 'As this statute has reference to the public good it ought to be liberally construed.' It has been said that 'nothing else appearing' even claims under the railroad Federal Control Act would be entitled to priority. But this principle of construction is subject to the limitation that the generality of the

language of the section is restricted by the purpose to grant priority to the United States, only, and by legislative intention, as shown by other statutes. * * *." (l. c. 206).

Under the Missouri statute, Section 1168 R. S. 1929, priority is given to "debts owing to laborers or servants which have accrued by reason of their labor or employment, to an amount not exceeding $100.00 to each employee, for work or labor performed within six months next preceding the seizure or transfer of such property."

Under Title 11, "Bankruptcy," Section 104, priority is given for:

35 "* * *: (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceeding, not to exceed $600 to each claimant: * * * and (7) debts owing to any person who by the laws of the States or the United States is entitled to priority: * * *."

The Bramwell case, supra, is direct authority for the proposition that the statute giving priority to the United States is to be construed liberally and not literally, and that the taking of possession of the property by a state receiver is the equivalent of an assignment and is itself an act of bankruptcy so as to be brought within the statute.

By the same line of reasoning, the general language of the statute is to be construed liberally for the purpose of determining the rank or order of priority. Even though it is plain that the United States is given priority under the section supra, for debts due it, it does not follow that the priority so given is superior to the labor debts as defined in the bankruptcy act. By the same token that a liberal construction makes the appointment of a receiver equivalent to a voluntary assignment, a liberal construction makes such proceeding equivalent to a proceeding in bankruptcy. If it were a proceeding in bankruptcy then, under the express provision of the Bankruptcy Act, wages due workmen, earned within three months and not to exceed $600.00 each, would be given priority over the priority of the debt to the United States.

It is expressly decided in the Bramwell case, supra, that the priority does not depend on whether the proceeding is in bankruptcy or a state proceeding which is equivalent to bankruptcy. There is nothing to be found in the section indicating a purpose to grant priority to labor debts, over debts due the United States, where the proceeding is in bankruptcy, and deny it where it is not in bankruptcy, if both proceedings are in

36 substance the same. For the same reason there is noth-

ing to indicate a purpose to give the respective priorities a different rank in such proceedings.

The same line of reasoning was the basis for the decision of the Supreme Court in the Marxen case, supra, where it is expressly and clearly decided that the legislative intent is to be determined, not only by the general language of Section 3466, supra, but as such intention is shown in other statutes of the United States relating to the same subject.

The state statute, supra, clearly purports to give priority to labor claims over all debts, including those of the United States. Whether it, in fact, does so depends upon whether it is in conflict with Section 3466, or the extent of the conflict.

Read literally and construed strictly there is a conflict. Giving it a liberal construction, as do the cases supra, and construing the state statute not only with Section 3466, supra, but also with the Bankruptcy Act, which, in terms of precision and of crystal clarity, gives preference to labor claims even over debts due the United States, the state statute does not conflict with Section 3466, supra, for the reason that said section 3466 permits the state to give priority to labor claims where such claims do not exceed $600.00 each and were earned within three months prior to the appointment of the receiver. While the state statute could not, without the consent of Congress, under the authorities supra, create a priority over debts due the United States, the acts of Congress can and do impliedly permit the state to grant priority for labor claims over debts due the United States, to the extent provided for by the Bankruptcy Act.

Section 3466, supra, and the Bankruptcy Act are limitations on the state authority, but so long as the state statute conforms to the general policy of those statutes, the state is acting
37 within the orbit of its authority in dealing with labor claims.

The cases supra cannot be distinguished on the ground that they adopt a liberal construction of section 3466, supra, only for the purpose of establishing priority in favor of the debts due the United States, because in the cases supra a liberal construction was given to the statute for the purpose of denying priority to the United States where such preference conflicted with the broad policy of the Government relating to the matter under consideration. If the debts due the laborers in the instant case were created within three months before the receivership and are for less than $100.00 each, they fall within both the state statute and the Bankruptcy Act and have priority over the priority of the United States for debts due it, as provided in Section 3466 supra. This is so for the reason that, when the

statute granting priority to the United States for debts due it, is read in connection with both the Missouri statute and the Bankruptcy Act relating to debts of laborers, the intention of Congress to permit the state to give priority to such laborers, even over debts due the United States, would seem to us to be quite plain, especially in view of the fact that it is directly held in the Marxen case, supra, that we are not confined solely to the priority statute to determine the intent of Congress with reference to such labor claims, but that such intent is to be gathered from the Bankruptcy Act, supra, and from other acts of Congress relating to the same subject.

The national and state governments have long had a very definite policy with reference to this subject.

It is nowhere better stated than in a case rendered by the District Court in 1906, In re Erie Lumber Co., 150 Fed. 817, l. c. 823, where it is said:

38 "The protection of the wages of labor is a primary duty of society and of government. The wage-earner constitutes an immense proportion of those who labor for the common welfare. So long as he remains helpful and self-sustaining, every prosperous result follows. In those unhappy epochs when the individual laborer is helpless, he and those dependent upon him become a charge upon the public. When labor en masse becomes helpless, when it is no longer possible to earn the means of subsistence, government itself is threatened, and revolution has often followed. It is therefore profoundly and philosophically true that it is the duty of government in every contingency to secure his earnings to the wage-earner. This truth is at the basis of those laws which attempt to accomplish the result upon which the existence of orderly society may itself depend. National and state legislation sedulously attempt to accomplish this, and otherwise to ameliorate the condition of the laboring man. *The courts with equal solicitude strive to attain the same end.* * * *." [Italics ours.]

The solicitude of the Federal Government for the protection of common laborers and the securing to them of the payment of their wages is not only clearly manifested by the Bankruptcy Act, supra, but by numerous other recent statutes—such, for instance, as the act commonly referred to as a floor for wages and a ceiling for hours, and the act creating the labor relations board. In recent years the United States Government has spent millions and perhaps billions for the sole and primary purpose of giving all laborers employment, and to further the economic theory of increasing the purchasing power of the ordinary laborer, in the hope of thereby permanently restoring prosperity. This is

clearly shown by the P. W. A. act, creating projects to which the government makes large contributions to keep those who would otherwise be out of employment gainfully employed.

The National Housing Act under which the debt to the Government in the instant case came into existence, has a like general purpose. It is an emergency measure to span the period until private lenders and investors "make ample credit available
39 for the purpose of financing alterations, repairs, etc." It also has for one of its primary purposes the creation of jobs for those unemployed, as well as the furnishing of better homes to those of lower earnings. The broad public policy clearly indicated by these statutes and others that might be mentioned prevents the granting of priority to the government in the instant case, over the claims of those laborers. In Mellon v. the Michigan Trust Co., 271 U. S. 236, 70 L. Ed. 924, l. c. 926, the court, holding against Federal priority, said:

"* * *. To permit the claim preference, we think, would conflict with the spirit and broad purpose of the statute. These become plain enough upon consideration of the just ends which Congress had in view together with the recent policy, revealed by the Bankruptcy Act, in respect of priorities."

This rule is announced and reaffirmed in Armstrong Paint & Varnish Works v. Nu-Enamel Corporation, 305 U. S. 315, l. c. 333, 83 L. Ed. 195, l. c. 205, where it is said:

"* * *. We have refused to nullify statutes, however hard or unexpected the particular effect, where unambiguous language called for a logical and sensible result. Any other course would be propery condemned as judicial legislation. However, to construe statutes so as to avoid results glaringly absurd, has long been a judicial function. Where, as here, the language is susceptible of a construction which preserves the usefulness of the section, the judicial duty rests upon this Court to give expression to the intendment of the law."

In the instant case we think the result would be glaringly absurd to sustain the contention of the Government that its preferred claim has priority over the claims of these common laborers. The statute relied upon is written in very general terms. There is no plain and unambiguous language in it requiring such construction. The broad policy of the Government in dealing with such claims is clearly and unambiguously expressed in the bankruptcy act, which not only gives preference to such labor claims, but gives priority over the debts due the United States. It is directly and clearly held in the Bramwell case, supra, that it is immaterial whether the proceeding be actually and
40 technically in bankruptcy, or a state proceeding which is the equivalent of a bankruptcy proceeding, for the pur-

pose of determining whether the Government is entitled to priority under Section 3466, Revised Statutes. On exactly the same principle and for the identical reason it is immaterial in the instant case that this is not strictly a bankruptcy proceeding for the purpose of determining whether these labor claims are given a preference and priority over the preferred claim of the Government.

The question that has given us the most serious trouble in the instant case is that the agreed statement is rather loosely drawn and does not clearly disclose the details with reference to these labor claims. All that is said concerning them is:

"That among the claims were certain labor claims totaling about nine hundred and no/100 dollars ($900) and representing the claims of about twelve individuals who had done common labor for the St. James Distillery. These individuals claim a preference by reason of Section 1168, Revised Statutes of Missouri, 1929."

This statement does not bring the claims strictly within the state statute. It does not show that they do not exceed $100.00 each and were for wages earned during the six months immediately preceding the receivership. Neither does it bring the claims within the Bankruptcy Act, which requires that the claims shall not exceed $600.00 each, and be for wages earned within three months before the date of the commencement of the proceeding.

It is fairly inferable that none of the claims exceed $100.00 as they average only $75.00 each, which would indicate they were earned less than three months before the appointment of the receiver, so as to come within both the state statute and the Bankruptcy Act. The contention of the Government in the trial court and again in this court has always been, and is, that it is entitled to priority over the claims of laborers, notwith-
58 standing their respective amounts or the time in which the wages were earned. It is a well settled rule of procedure in this state that the parties are bound and concluded by the theory upon which the case was tried in the lower court, and the instant case was tried on that theory, not only in the lower court, but in this court. Young v. Greene County, 342 Mo. 1105, l. c. 1116, 119 S. W. (2d) 369; Toroian v. Park View Amusement Co. 331 Mo. 700, l. c. 704, 705, 56 S. W. (2d) 134; Benz v. Powell, 338 Mo. 1032, l. c. 1036, 1037, 93 S. W. (2d) 877; Cook v. Sears, Roebuck & Co., 71 S. W. (2d) 73.

On the argument of the case counsel for the appellant was asked the question, by the writer, whether or not the facts were that the claims were for less than $100.00 each, and were for wages earned within three months prior to the receivership, and

he stated that they were. Hence, we have concluded that we are not compelled to reverse the case and remand it so as to require a finding by the trial court that the labor claims do not exceed $100.00 each and were earned within three months before the appointment of the receiver, so as to bring them within both the state statute and the Bankruptcy Act, which was in force when the receiver in the instant case was appointed.

The judgment is erroneous in not allowing the Government's claim as a preferred one, but inferior to the preferred claims of the laborers. As the laborers' claims exceed the entire assets in the hands of the receiver, after paying the costs of the proceeding, the error is harmless. The appellant would not have received anything on its claim if it had been properly allowed.

42 For these reasons we think the judgment should be, and is affirmed.

W. D. TATLOW,
Presiding Judge.

SMITH, J., concurs.
FULBRIGHT, J., concurs.

44 In Springfield Court of Appeals

[Title omitted.]

Notice of motion for rehearing

Filed Aug. 30, 1940

To Messrs. BREUER AND NORTHERN, *Attorneys for Respondent:*

Take notice that the undersigned will file with the Clerk of the Springfield Court of Appeals a Motion for a Rehearing in the above entitled matter on Saturday, August 31st, 1940.

A copy of said motion is attached hereto.

(Signed) HARRY C. BLANTON,
Harry C. Blanton, *U. S. Attorney.*
(Signed) HERBERT H. FREER,
Herbert H. Freer, *Asst. U. S. Attorney.*
(Signed) RUSSELL VANDIVORT,
Russell Vandivort, *Asst. U. S. Attorney.*
(Signed) WILLIAM L. MAHER,
Wm. L. Maher, *Spec. Asst. U. S. Attorney.*

Served by mailing a copy of the within notice to Respondent's Attorneys of record this 29th day of August 1940.

(Signed) RUSSELL VANDIVORT,
Assistant U. S. Attorney.

45 In Springfield Court of Appeals
March Term, 1940

[Title omitted.]

Appellant's motion for rehearing

Filed Aug. 30, 1940

Comes now the Appellant and moves the Court to set aside its opinion and judgment rendered and filed herein on the 22nd day of August 1940, and grant a rehearing for the following reasons:

I

The decision is in conflict with an express statute in that the claims of certain laborers are accorded priority over the claim of the United States, which is contrary to Section 3466, Revised Statutes of the United States, Section 191, Title 31, United States Code Annotated, which provides:

"SECTION 191. Priority Established. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, *the debts due to the United States shall be first satisfied;* * * *" [Italics supplied.]

46 II

The decision is in conflict with decisions of the Supreme Court of Missouri with reference to statutory construction in that the Court considered the Bankruptcy Act to determine the extent of priority granted by Section 346, notwithstanding the fact that said Section is unambiguous and the language is clear that "the debts due the United States shall be first satisfied."

In State ex rel. Jacobsmeyer v. Thatcher, 338 Mo. 622, 92 S. W. (2d) 640, l. c. 643, the Supreme Court of Missouri held that where the language of an Act is clear, no statutory construction contrary to its evident intent is permissible. The Court said:

"We are not persuaded that the lawmakers intended to make any provision for St. Louis County in this particular case: First, because the language of the enactment is perfectly clear and unambiguous. In such case there is nothing to construe, and no intent contrary to the evident intent can rationally or permissibly be implied."

The same Court in State ex rel. Wabash Ry. Co. v. Shain, 341 Mo. 19, 106 S. W. (2d) 898, l. c. 900, said:

"If the intention is clearly expressed, and the language used is without ambiguity, all technical rules of interpretation should be rejected."

III

The decision is in conflict with the decisions of the Federal Courts with reference to statutory construction in that the Court considered the Bankruptcy Act to determine the extent of priority granted by Section 3466, in spite of the fact that said Section is unambiguous and the language is clear that "the debts due to the United States shall be first satisfied."

In the case of Andrews, et al. v. St. Louis Joint Stock Land Bank, 107 Fed. (2d) 462, l. c. 470 (Mo. C. C. A. 8), the Court held that under such circumstances no statutory construction contrary to its evident intent is permissible and the Court said:

47 "We have said that if the statutory meaning is clear, there is no occasion for rules which aid in ascertaining the meaning of the statute, and that neither legislative nor executive construction was of any aid or of force" (with citations).

IV

The decision is in conflict with a decision of the Supreme Court of Missouri with reference to statutory construction in that the Court considered the Bankruptcy Act to determine the extent of priority granted by Section 3466, in spite of the fact that the Bankruptcy Act is a special Act and applies only to bankruptcy cases.

In State vs. Smith, 334 Mo. 653, 67 S. W. (2d) 50, l. c. 57, the Court held that when special acts and general statutes relate to the same subject matter, the special act will prevail only as far as the particular subject matter comes within its provisions. The Court said:

"It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions."

V

The decision is in conflict with decisions of the Federal Courts and other State Courts, which hold that the Bankruptcy Act and

State priority laws do not operate to give laborers priority over the United States in Receivership cases because the Bankruptcy Act applies only to bankruptcy cases.

In Piedmont Corporation v. Gainesville & N. W. R. Co., 30 Fed. (2d) 525, l. c., 529, 530 (D. C. N. D. Ga.), the Court under circumstances identical with the case at bar, accorded the
48 claim of the United States priority over the claim of certain laborers. The Court said:

"But by Sections 2793 and 2795 of the Code of Georgia, enacted prior to the making of the mortgage here involved, employees are given a lien on the railroad and other property of the company. * * *."

"But the so-called liens must yield to the priority given the United States, for being generally applied to all the property of the company, they are really only a priority in distribution like a judgment lien, which must yield to the statute of Congress as construed by the Supreme Court. This not being a case in bankruptcy, the ruling in Guarantee Title and Trust Co. v. Title Guaranty & Surety Co., 224 U. S. 152, 32 S. Ct. 457, 56 L. Ed. 706, is not applicable to save even the claims of laborers."

The same rule was followed in Kupshire Coats, Inc. v. United States, 272 N. Y. 221, 5 N. E. (2d) 715; Carpenter vs. Wabash Ry. Co., 103 Fed. (2d) 996 (Mo. C. C. A. 8), and New York vs. Maclay, et al., Receivers, et al., 288 U. S. 290.

SUGGESTIONS IN SUPPORT OF MOTION FOR REHEARING

Appellant respectfully suggests that the motion for a rehearing in this case be granted for the reason that the decision is in conflict with the various decisions of the State and Federal Courts therein mentioned.

The decision heretofore handed down sustains the contentions of this appellant that the note acquired by the United States by assignment to the Federal Housing Administrator as its instrumentality or agent, before the appointment of the receiver in this case is a debt due it which is preferred under Section 3466, Revised Statutes of the United States, and that by reason of said Section, the claim of the United States is given priority
49 over all other claims whose priority is based solely on a State statute, because Acts of Congress prevail over State statutes.

The decision then states that Section 3466 does not conflict with the State statute granting priority to laborers "for the reason that said Section 3466 permits the State to give priority to labor claims where such claims do not exceed $600.00 each, and were earned within three months prior to the appointment of the Re-

ceiver," because "the Acts of Congress can and do impliedly permit the State to grant priority for labor claims over debts due the United States, to the extent provided for by the Bankruptcy Act."

I

THE DECISION IS IN EXPRESS CONFLICT WITH ESTABLISHED RULES OF STATUTORY CONSTRUCTION AS ANNOUNCED BY THE MISSOURI SUPREME COURT AND THE FEDERAL COURTS

Appellant respectfully submits that the Court erred in considering the Bankruptcy Act for the purpose of construing the extent of the priority of the United States under Section 3466, because the language of said Section is unambiguous and it specifically states that under the circumstances in this case "the debts due to the United States shall be first satisfied." The Courts of this State as well as United States Courts have repeatedly held that where the language of an Act is clear, no construction contrary to the evident intent is permissible.

In State ex rel Jacobsmeyer v. Thatcher, 338 Mo. 622, 92 S. W. (2d) 640, l. c. 643, the Supreme Court of Missouri announced the following rule. The Court said:

"We are not persuaded that the lawmakers intended to make any provision for St. Louis County in this particular case: First, because the language of the enactment is perfectly clear and unambiguous. In such case there is nothing to construe, and no intent contrary to the evident intent can rationally or permissibly be implied."

50 The same Court in State ex rel Wabash Ry. Co. v. Shain, 341 Mo. 19, 106 S. W. (2d) 898 l. c. 900, said:

"If the intention is clearly expressed, and the language used is without ambiguity, all technical rules of interpretation should be rejected."

The Federal Courts follow the same rule of construction. In the case of Andrews et al. v. St. Louis Joint Stock Land Bank, 107 Fed. (2d) 462 l. c. 470 (Mo. C. C. A. 8), the Court used the following language:

"We have said that if the statutory meaning is clear, there is no occasion for rules which aid in ascertaining the meaning of the statute, and that neither legislative nor executive construction was of any aid or of force." (With citations.)

Appellant further submits that the Court erred in considering the Bankruptcy Act for the purpose of construing the extent of the priority of the United States under Section 3466 in a receivership case because said section is a general statute and the Bank-

ruptcy Act is a special Act, which applies only to bankruptcy cases. It is a well settled rule of statutory construction that where special and general statutes relate to the same subject matter, the special Act will prevail only as far as the particular subject matter comes within its provisions. In State v. Smith, 334 Mo. 653, 67 S. W. (2d) 50 l. c. 57, the Court said:

"It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions."

In other words, under the Missouri rule of statutory construction, the Bankruptcy Act being a special one, its terms are only applicable to estates being administered by a Bankruptcy Court pursuant to said Act, and are not applicable to estates in receivership.

51

II

THE DECISION IS IN CONFLICT WITH PRIOR FEDERAL AND STATE DECISIONS INVOLVING THE SAME QUESTION OF LAW

Appellant submits that the motion for rehearing should be granted because the decision is in conflict with prior Federal and State decisions involving exactly the same question.

The Courts have repeatedly held that decisions with reference to Federal statutes are binding upon State Courts.

State v. Nortoni, 331 Mo. 764, 55 S. W. (2d) 272.

Foster Lumber Co. v. Atchison, 270 Mo. 629, 194. S. W. 281.

Donovan v. Wells Fargo, 265 Mo. 231, 177 S. W. 839.

Williams v. Terminal R. R. Association, 339 Mo. 594, 98 S. W. (2d) 651. Cert. den., 300 U. S. 669.

Chesapeake & Ohio v. Martin, 283 U. S. 209.

The decision in the case at bar followed that rule and consideration was given to the decisions of the Federal Courts, namely, Bramwell vs. United States Fidelity & Guaranty Co., 269 U. S. 483, and In Re Marxen, 307 U. S. 200, in an effort to arrive at the proper construction of Section 3466, although this Court admitted that the facts of those two cases were entirely different from the facts in the case at bar.

Appellant's further research has disclosed that the exact question involved in this case has already been the subject of a decision of a Federal Court, which decision is of course binding upon this Court. In the case of Piedmont Corporation v. Gaines-

ville & N. W. R. Co., 30 Fed. (2d) 525, l. c., 529, 530 (D. C. N. D. Ga.), which involved a railroad receivership, the question arose as to whether a claim of the United States for money loaned to the railroad should have priority under Section 3466 over
52 certain claims of laborers, which were entitled to priority under the State law and which would have been entitled to priority over the claim of the United States if the estate had been in bankruptcy.

The Court, after careful consideration of the problems involved, found that the claim of the United States was entitled to priority over the claims of the laborers and specifically decided that the laborers were not aided by the Bankruptcy Act because the proceedings were not Bankruptcy proceedings. The Court said:

"But by Sections 2793 and 2795 of the Code of Georgia, enacted prior to the making of the mortgage here involved, employees are given a lien on the railroad and other property of the company." * * *

"But the so-called liens must yield to the priority given the United States, for being generally applied to all the property of the company, they are really only a priority in distribution like a judgment lien, which must yield to the statute of Congress as construed by the Supreme Court. This not being a case in bankruptcy, the ruling in Guarantee Title & Trust Co. v. Title Guaranty & Surety Co., 224 U. S. 152, 32 S. Ct. 457, 56 L. Ed. 706, is not applicable to save even the claims of laborers."

Appellant has been unable to discover a Missouri decision in which the facts are identical with the facts in this case, but the Courts of other states have granted the claims of the United States priority under circumstances which were substantially the same as the circumstances herein.

The case of Kupshire Coats, Inc. v. United States, 272 N. Y. 221, 5 N. E. (2d) 715, involved an assignment for the benefit of creditors, and the question was whether a claim of the United States was entitled to priority over the claims of certain laborers who had priority under the State statute and who would have had priority over the United States had the proceeding been in Bankruptcy. The Court concluded that the claim of the United States was prior to that of the laborers.
53 It is interesting to note that in the Kupshire case the specific contention was made that Section 3466 was impliedly amended by the Bankruptcy Act and that the laborers should, therefore, be granted priority. The Court of Appeals

of New York held that the Bankruptcy Act was not applicable since the case was not a Bankruptcy case. The Court said:

"Here we have a corporate entity, the Kupshire Coats, Inc., indebted to the United States for taxes, and insolvent. It has made a voluntary assignment of its assets and, not having sufficient funds to pay all the debts due, those due to the United States are to be first satisfied. The respondents have claimed, and the courts below have held, apparently, that a change or modification in this law was made by the Bankruptcy Act and that the bankruptcy provisions apply to the voluntary assignments for the benefit of creditors under State laws." * * *

"We are of the opinion that these two statutes of the United States should be read together; that all claims of the United States in a voluntary assignment have preference over all other claims, including wages; and that the Bankruptcy Act only applies to cases of bankruptcy and to proceedings in the bankruptcy court, or coming within its jurisdiction."

The decision in the Kupshire case was cited with approval in the case of In re Lincoln Chair & Novelty Co., 9 N. E. (2d) 7, l. c. 8, in which the Court of Appeals of New York said:

"The State of New York has, as sovereign, a common law right of priority in payment of its claims out of the estate of an insolvent debtor, but that common law right of priority has been made subordinate to the statutory priority of the United States. No exception has been made by Congress in favor of claims of the State or of wage-earners or other persons. Upon the voluntary assignment of an insolvent debtor, the mandate of the statute that out of the estate of the insolvent 'the debts due to the United States shall be first satisfied' is absolute. County of Spokane v. United States, 279 U. S. 80, 49 S. Ct. 321, 73 L. Ed. 621."

The Kupshire decision was so cited with approval in the case of In Re Assignment of T. J. Simpson, Inc., 15 N. Y. S. (2d) 1021, in which the Supreme Court of New York said:

54 "That all claims of the United States in a voluntary assignment have preference over all other claims including wages and that the Bankruptcy Act only applies to cases of bankruptcy and to proceedings in the bankruptcy court has become the recognized rule in this state."

In the case of Carpenter vs. Wabash Ry. Co., 103 Fed. (2d) 996 (Mo. C. C. A. 8), which involved a Missouri Railroad receivership, the Court held that the provision of the Bankruptcy Act, which provided in effect that claims of railroad employees for personal injuries should have priority over claims of the United States, had no application to a receivership and that the

United States had priority under Section 3466, notwithstanding that a different result would have been reached had the proceedings been in bankruptcy. The Court said:

"By subsection (n) of Section 77 of the Bankruptcy Act as amended, 11 U. S. C. A. §205 (n) claims for personal injuries to employees of a railroad corporation are entitled to priority. Central Hanover Bank & Trust Company, et al. v. Williams, et al., 8 Cir. 95 F. 2d 210. But this subsection applies expressly to proceedings in Bankruptcy, and at this stage, as charged in the proposed petition, this is an equity receivership."

Appellant has been unable to discover any decision by the Supreme Court of the United States in a receivership case dealing with the priority of claims of the United States under Section 3466 over the claims of laborers who were entitled to priority under the State law and the Bankruptcy Act. However, in the case of New York vs. Maclay, et al., Receivers, et al., 288 U. S. 290, a closely analagous situation was presented. It involved a receivership and dealt with the priority of a tax claim of the United States under Section 3466 over tax claims of the State of New York, which were entitled to priority under the State law, and which would have been payable pro rata with the claim of the United States had the proceeding been in Bankruptcy. The Supreme Court in that case concluded 55 that the tax claim of the United States was entitled to priority over the tax claim of the State, in accordance with the expressed provisions of Section 3466, regardless of the State law and the Court did not concern itself with the fact that a different result would have been reached had the case been in Bankruptcy.

Appellant submits that in view of the foregoing authority the order of the priority set forth in the Bankruptcy Act has no application to or bearing upon receivership cases. It is respectfully urged that this Court was in error in applying to the facts of the case at bar any rule of priority, which might prevail in a bankruptcy case, for the obvious reason that in the instant case there is no bankruptcy within the scope and terms of the Bankruptcy Act. The case at bar involves only a State Court Receivership, which is a proceeding wholly distinct and separate from and governed by different law than applied in cases pending in a Court of Bankruptcy. It is respectfully urged that in the case at bar the claim of the United States was entitled to priority over the claims of laborers under the Statutes and authorities hereinabove cited, and accordingly this appellant asks that the

decision and opinion rendered herein be set aside and the appellant granted a rehearing in accordance with this petition.

Respectfully submitted.

(Signed) HARRY C. BLANTON.
Harry C. Blanton,
United States Attorney.

(Signed) HERBERT H. FREER.
Herbert H. Freer,
Assistant U. S. Attorney.

(Signed) RUSSELL VANDIVORT,
Russell Vandivort,
Assistant U. S. Attorney.

(Signed) WILLIAM L. MAHER,
William L. Maher,
Special Assistant U. S. Attorney,
Counsel for Appellant.

56 Served by mailing a copy of the foregoing Motion and Notice to Respondent's Attorneys of Record, this 29th day of August 1940.

(Signed) RUSSELL VANDIVORT.
Russell Vandivort,
Assistant United States Attorney.

57 In Springfield Court of Appeals

Order overruling motion for rehearing, Sept. 18, 1940

Now at this day, the Court having fully considered the said Appellant's motion for a rehearing of this cause, doth overrule the same.

Opinion filed.

58 In Springfield Court of Appeals

March Term, 1940

[Title omitted.]

Opinion

Filed Sept. 18, 1940

Motion for rehearing denied

Tatlow, P. J., Counsel for the United States as Intervenor, has filed a motion for rehearing citing among other cases, Kupshire

Coats, Inc. v. United States, 272 N. Y. 221, 5 N. E. (2d) 715; Piedmont Corporation v. Gainesville & N. W. R. Co., 30 Fed. (2d) 525. In the Kupshire case the Court of Appeals of New York has reached a contrary conclusion to ours in the instant case. In that case the court arrives at the same conclusion that we do, that the test is whether the State Statute (Section 1168, R. S. 1929) is "inconsistent" and "contrary" to Section 3466 of the Revised Statutes giving priority to the United States. It makes the case turn upon whether that section has been repealed or modified. That Section 3466 has not been repealed is, of course, self-evident. That it has not been directly and expressly, either amended or modified is likewise true. But it seems to us that the court, in that case, clearly overlooked the "generality of the language" of that section, which the Supreme Court of the United States, in the Bramwell case, cited and reviewed in our original opinion, considered both "significant" and controlling. The Kupshire case, as we think, is in conflict with
59 the Bramwell case in holding that the Bankruptcy Act throws no light on the "generality of the language" of that section and seems to overlook the rule plainly announced in the Bramwell case:

"* * * no regard is had to the purpose or manner of the assignment and they include all cases in which an act of bankruptcy is committed under the laws of a state or under a national bankruptcy law (l. c. 488, 489. * * *).

"The priority given does not depend on any proceeding under the bankruptcy laws of the state or nation. There is nothing in the language of the section and no reason has been suggested to indicate a purpose to give priority in the case of a debt due the United States from a debtor subject to the bankruptcy act and to deny priority under like circumstances when the debt is due from an insolvent bank or another debtor to whom the act does not apply." * * *.

The Kupshire case does not mention the case of Mellon v. Michigan Trust Co., 271 U. S. 236, 70 L. Ed. 924, l. c. 926, in which the court denied priority to the Federal Government and said:

"To permit the claimed preference, we think, would conflict with the spirit and broad purpose of the statute. These become plain enough upon consideration of the just ends which Congress had in view, together with the recent policy revealed by the bankruptcy act in respect to priorities."

If the Supreme Court means what it says, which we must assume it does, we must look at the generality of the language of the Statute (Section 3466, supra) for the purpose of determin-

ing its broad policy. We must also look at the recent policy revealed by the bankruptcy act in respect to priorities. In so looking it becomes plain enough to us that the just ends which Congress had in view in using the general language as it did in that section, permits the State, in dealing with labor claims, to establish a preference so long as the State Statute conforms to the Federal Statute as to the conditions upon which the bankruptcy act allows a preference to such claims. While the Bankruptcy Act does not repeal Section 3466, supra, the meaning of that section is to be determined more by the broad policy indicated by the general language of the act, as that policy is not only reflected by that section itself, but by the recent policy revealed by the bankruptcy act in respect to such priority.

60 Section 3466 not only creates a priority in favor of the United States, but also constitutes a limitation upon State authority. While we regret that we cannot reach the same conclusion that the court did in the Kupshire case, the fact still remains that that case neither prevents nor excuses us from exercising our independent judgment in construing Section 3466. Our judgment can only be coerced in the construction of this section by an opinion of the Supreme Court of Missouri or the Supreme Court of the United States. The Supreme Court of Missouri has never had an occasion to deal with the matter directly or indirectly so far as we are advised. With due and proper deference to the opinion of the court in the Kupshire case, we think that the conclusion there reached is contrary to the reasoning of the Supreme Court of the United States with reference to this Statute. We realize that the Supreme Court of the United States, so far as we have been able to ascertain, has never decided the exact question involved in the instant case, and which was involved in the Kupshire case. If our conclusion is wrong the Supreme Court of the United States will no doubt correct it upon proper application.

Counsel for the Intervenor, in citing Piedmont Corporation v. Gainesville & N. W. R. Co., 30 Fed. (2d) 525, say:

"Appellant's further research has disclosed that the exact question involved in this case has already been the subject of a decision of a Federal Court which decision is, of course, binding upon this Court."

We do not agree to either conclusion. That case was rendered by the District Court for the northern district of Georgia and is not binding on us. And neither does it justify us in refusing to decide the instant case according to our independent judgment. Neither do we think that that case decides the exact question

involved in the instant case. In fact, we think it sheds a very dim light on the question involved here.

For these reasons the appellant's motion for rehearing should be and is denied.

W. D. TATLOW, *Presiding Judge.*

SMITH, J., concurs.
FULBRIGHT, J., concurs.

61 And that on the 17th day of December, 1940, there was received from the Supreme Court of the State of Missouri a mandate denying certiorari in this cause, a copy of which is hereto attached:

62 In Supreme Court of Missouri

September Term, 1940

State of Missouri, at the relation of The United States of America, relator

vs.

W. D. Tatlow, Robert J. Smith, and James F. Fulbright, Judges of the Springfield Court of Appeals, respondents

Order denying petition for certiorari

Dec. 3, 1940

Now at this day, on consideration of the petition for a writ of certiorari herein to the said respondents, it is ordered by the court here that the said petition be, and the same is hereby denied.

[Clerk's certificate to foregoing paper omitted in printing.]

63 *Recital as to issuance of mandate*

And that on the same day the Mandate of the Springfield Court of Appeals was sent down to the Circuit Court of Phelps County.

64 In Springfield Court of Appeals

Order recalling mandate

December 20, 1940

Now at this day it is ordered by the Court that the mandate and opinion of this Court, directed to the Circuit Court of

Phelps County on the 17th day of December, 1940, be, and the same is hereby recalled and for naught held and esteemed, and the said Circuit Court of Phelps County is directed to proceed no further in this cause until further notified by the Springfield Court of Appeals.

65 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1941

Supreme Court of the United States

Order allowing certiorari

Filed April 7, 1941

The petition herein for a writ of certiorari to the Springfield Court of Appeals, State of Missouri, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1941

No. ~~863~~ 93

In the Supreme Court of the United States

OCTOBER TERM, 1940

THE UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. EMORY, ST. JAMES DISTILLERY, INC., AND ST. JAMES DISTILLERY

PETITION FOR A WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

THE UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. EMORY, ST. JAMES DISTILLERY, INC., AND ST. JAMES DISTILLERY

PETITION FOR A WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Springfield Court of Appeals affirming a judgment of the Circuit Court of Phelps County, Missouri, which granted priority to certain wage claims over the claims of the United States.

OPINIONS BELOW

The opinion of the Springfield Court of Appeals (R. 30–40) and its opinion on rehearing (R. 49–52) are reported in 143 S. W. (2d) 318.

JURISDICTION

The judgment of the Springfield Court of Appeals was entered August 22, 1940 (R. 29–30). A motion for rehearing was overruled on September 18, 1940 (R. 49). A petition for a writ of certiorari to the Supreme Court of Missouri was denied December 3, 1940[1] (R. 52). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925, on the ground that the decision below denied a title, right, privilege, or immunity claimed by the United States under Section 3466 of the Revised Statutes of the United States. The cases relied upon to sustain the jurisdiction of this Court are *United States* v. *Knott*, 298 U. S. 544, and *United States* v. *Summerlin*, 310 U. S. 414.

The court below held that in a state receivership action a debt due the United States was not entitled to priority over wage claims whose priority was established by Missouri statute. The United States contends that Section 3466 of the Revised

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[1] The granting of a writ of certiorari by the Supreme Court of Missouri to review a judgment of a court of appeals is discretionary. It was believed necessary, however, to invoke that discretion as a condition precedent to making application to this Court for a writ of certiorari, and, of course, the time within which the present petition is to be filed commenced to run on the date of the denial of the petition by the Supreme Court of Missouri, December 3, 1940. *American Ry. Express Co.* v. *Levee*, 263 U. S. 19, 20–21.

Statutes confers upon it a priority which may not be defeated by state statute.

The petitioner raised this federal question before the Circuit Court of Phelps County (R. 2–3, 6, 16–17, 25–26); on assignment of errors on appeal to the Springfield Court of Appeals (R. 28); on a motion for rehearing (R. 41); and in its petition for a writ of certiorari to the Supreme Court of Missouri. The Circuit Court of Phelps County and the Springfield Court of Appeals each passed upon the federal question adversely to the contention of the petitioner (R. 2–3, 6–7, 34–40, 49–52). The Supreme Court of Missouri declined to entertain the question (R. 52).

The question presented is one of substance, as is more fully developed under the reasons for granting the writ, *infra*, pp. 6–10, and conflicts with the decision of the Court of Appeals of New York in *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221, and that of the United States District Court for the Northern District of Georgia in *Piedmont Corporation* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525.

QUESTION PRESENTED

Whether, in an equity receivership proceeding in a state court, wage claims, afforded priority in payment by state statute, take precedence in payment over a debt due the United States, the prior payment of which is directed by Section 3466 of the Revised Statutes.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 12–15.

STATEMENT

The instant case was tried upon a stipulation of facts (R. 23X24), the material parts of which are as follows:

The St. James Distillery became hopelessly insolvent on or before August 1936. On August 27, 1936, a petition was filed asking that a receiver be appointed to liquidate their assets, and on September 9, 1936, W. D. Jones was duly appointed receiver. The assets which came into the hands of the receiver amounted to the sum of $1,000. After payment of certain expenses of the receivership, there remained for distribution the sum of about $678.00.

Among the claims filed with the receiver were those of approximately 12 individuals totalling about $900.00. These claimants had performed common labor for the insolvent corporations and claimed preference in payment under the provisions of Section 1168 of the Revised Statutes of Missouri, which granted priority in payment to labor claims where the individual amount did not exceed $100.00.

On September 23, 1935, the St. James Distillery had executed a note in the amount of $7,481.78, made payable to the Industrial Bank and Trust

Company of St. Louis. The St. James Distillery defaulted in payments, and on July 14, 1936, the note was indorsed and delivered to the Federal Housing Administrator, acting for and on behalf of the United States, and the United States, under its contract of insurance, paid the Industrial Bank and Trust Company the sum of $5,988.88. The United States filed a claim with the receiver for payment of this amount ($5,988.88) with interest thereon from July 14, 1936. Priority was claimed under the provisions of Section 3466 of the Revised Statutes.

The Circuit Court of Phelps County denied the claim of the United States to priority, allowed it as a general claim only, and held that the labor claims were entitled to preference in payment by virtue of the Missouri statutes (R. 2–3, 6–7). Appeal was taken by the United States to the Supreme Court of Missouri, and was by that court transferred to the Springfield Court of Appeals (R. 4). On appeal, the Springfield Court of Appeals affirmed, holding that while the Circuit Court of Phelps County had committed error in failing to hold that the United States was a preferred creditor, such error was harmless inasmuch as the labor claims which took precedence over the claim of the United States more than absorbed the assets remaining (R. 30–40). A rehearing was denied (R. 49–52), and a petition for a writ of certiorari was denied by the Supreme Court of Missouri on December 3, 1940 (R. 52).

SPECIFICATION OF ERRORS TO BE URGED

The Springfield Court of Appeals of Missouri erred:

1. In holding that in a state insolvency proceeding labor claims are entitled to priority over a debt due the United States.

2. In holding that wage claims entitled to priority under Section 64a of the National Bankruptcy Act are entitled to the same priority in nonbankruptcy proceedings notwithstanding the provisions of Section 3466 of the Revised Statutes.

3. In holding that R. S., Section 3466 should be construed so as to permit prior payment of labor claims.

4. In holding that a state statute providing for priority of payment of wage claims in a state insolvency proceeding is not in conflict with R. S., Section 3466.

5. In failing to hold that state statutes providing for priority of payment are wholly inapplicable to a claim of the United States under R. S., Section 3466.

6. In failing to hold that the United States was entitled to priority in payment.

7. In affirming the judgment of the Circuit Court of Phelps County.

REASONS FOR GRANTING THE WRIT AND FOR REVERSING THE JUDGMENT OF THE COURT BELOW

The court below held, correctly, that claims of the United States acquired under the National

Housing Act prior to the appointment of a receiver are entitled to such priority as is accorded other claims of the United States under Revised Statutes, Section 3466.[5] It further held, however, that all claims of the United States are subordinate to those of wage earners. The court expressly recognized that the states are without power to establish a priority in conflict with that prescribed by Section 3466 of the Revised Statutes (*cf. Field* v. *United States*, 9 Pet. 182, 201; *United States* v. *Oklahoma*, 261 U. S. 253, 260; *Spokane County* v. *United States*, 279 U. S. 80, 90). But it concluded that Revised Statutes, Section 3466, should be applied in nonbankruptcy proceedings in conformity with the policy embodied in Section 64a of the Bankruptcy Act, which gives a limited priority to wage claims over those of the United States, and that, subject to the limitations as to time and amount prescribed by the Bankruptcy Act, the priority accorded wage claims by the Missouri statute is valid.

1. The decision below, as the court recognized (R. 50), is in conflict with the decision of the Court

[5] The decision of the court below in this aspect is in accord with the uniform ruling of other courts. *In re Dickson's Estate*, 197 Wash. 145; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Aronson* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); *cf. In re Hansen Bakeries, Inc.*, 103 F. (2d) 665, 666 (C. C. A. 3d); *In re Miller*, 105 F. (2d) 926, 927-928 (C. C. A. 2d); *In re Stamford Auto Supply Co.*, 25 F. Supp. 530, 531 (N. D. Tex.)

of Appeals of New York in *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221. The Court of Appeals of New York held that the Bankruptcy Act was self-contained, and that Section 64a did not attempt or purport to modify R. S., Section 3466. It accordingly held that the claims of the United States were entitled to payment ahead of labor claims.[1]

Under Section 64a of the Bankruptcy Act, wage claims, not exceeding $600, earned within three months of the commencement of the bankruptcy proceedings are entitled to priority over unsecured claims of the United States and the states for taxes; non-lien tax claims of the United States and the states are on a parity; and the latter are entitled to priority over unsecured claims of the United States other than for taxes. In all other insolvency proceedings, however, it has heretofore been the settled rule that, under R. S., Section 3466 claims of the United States, whether for taxes or other debts owing to the Government, are entitled to priority over unsecured claims of wage earners and the states. *Spokane County* v. *United States*, 279 U. S. 80; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Korman* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); *Piedmont Corporation* v. *Gainesville & N. W. R.*

[1] In *Piedmont Corp.* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525, the District Court for the Northern District of Georgia, in a federal receivership action, reached the same conclusion.

Co., 30 F. (2d) 525 (N. D. Ga.); *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221; see Rogge, *The Differences in the Priority of the United States in Bankruptcy and in Equity Receiverships*, 43 Harv. L. Rev. 251.[4] To be sure, only in the *Piedmont* and

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[4] The cases relied on by the court below for a different view are not even remotely in point. In *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483, 490, the court merely held that a resolution of the board of directors of an insolvent bank giving control and possession of the bank's assets to a state superintendent of banks for purposes of liquidation was "an act of bankruptcy" within the meaning of R. S., Sec. 3466, even though the bank was not subject to the Bankruptcy Act. *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, merely held that Section 10 of the Act of March 21, 1918, 40 Stat. 451, 456, subjected the Director General of Railroads to the laws theretofore applicable to common carriers, including those regulating the order of payment of private debts in an insolvency proceeding. The court expressly recognized (*id.* 238–239) that, apart from Section 10, debts owing directly to the United States would otherwise be entitled to priority under R. S., Sec. 3466, even though the rule was then otherwise under the Bankruptcy Act. In *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, 484–485, this Court held that R. S., Sec. 3466, was inapplicable to claims of the United States arising under Title II of the Transportation Act of 1920 which authorized loans to railroads and made specific provision for security. The court concluded that to grant priority to such claims would impair the credit of the railroads and thus defeat the purpose of the Transportation Act and that the express inclusion by Congress of the provision for security clearly manifested a purpose not to rely on the priority provided by R. S., Sec. 3466. As the court below itself expressly recognized, however, claims of the United States acquired under the National Housing Act are entitled to the same priority accorded other claims of the United States under R. S., Sec. 3466.

Kupshire cases, so far as we are aware, was any contention made that the scheme of priority established by the Bankruptcy Act modifies the right of priority reserved to the United States in non-bankruptcy proceedings under Revised Statutes, Section 3466. The absence of any such contention, however, undoubtedly reflects the general assumption that Section 64a of the Bankruptcy Act has no application outside of bankruptcy proceedings. See Rogge, *supra*.

The reasons for such assumption are obvious. Section 64a establishes the order of priority of payment of all claims in bankruptcy proceedings, the claims of the states and private individuals as well as those of the United States. Obviously, Section 64a was not intended to supersede entirely the priority provisions of state insolvency laws in non-bankruptcy proceedings, and it seems equally clear that Congress did not intend the provisions of Section 64a subordinating certain claims of the United States to wage and tax claims to be given effect apart from the other provisions of the section. Indeed, any effort to subordinate the claims of the United States in such manner in harmony with state insolvency statutes must lead to results so absurd as to forbid the conclusion that Congress intended the Bankruptcy Act to be given any such application.

Some state statutes give priority to state tax claims, wage claims being given a limited priority over other claims. See, e. g., Georgia Code Ann., secs. 67-1801, 67-1802, and

CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for a writ of certiorari should be granted. We suggest further that the decision of the lower court may be so plainly erroneous as to warrant a reversal without argument.

FRANCIS BIDDLE,
Solicitor General.

FEBRUARY 1941.

92–5707. The subordination of claims of the United States, in contrast to the tax claims of the state, to wage claims under such a state insolvency statute would obviously defeat the purpose and policy reflected in the Bankruptcy Act.

A similar problem may arise under R. S., Sec. 3466, in cases where the state statute gives priority to state tax claims over private claims secured by specific liens. To give priority to claims for state taxes out of property subject to a specific lien would probably not be in conflict with R. S., Sec. 3466, since the priority granted by R. S., Sec. 3466 extends only to the property belonging to the debtor at the time of the insolvency proceedings. See *Spokane County* v. *United States*, *supra*, at 91; Blair, *The Priority of United States in Equity Receiverships*, 39 Harv. L. Rev. 1, 29–30. The priority granted to wage earners under Section 64a of the Bankruptcy Act, however, is based on considerations of policy and applies to property belonging to the debtor at the time of the commencement of the proceedings. To grant the states priority over the United States to the extent of wage claims, where the state tax claim has priority over wage claims, would therefore be in plain conflict with the policy reflected in the Bankruptcy Act.

APPENDIX

Section 3466 of the Revised Statutes (31 U. S. C., sec. 191):

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 64 of the Bankruptcy Act, as amended (11 U. S. C., Supp. V, sec. 104):

> a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the rea-

sonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under this title, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And*

provided further, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in [So in original. Probably should read "is".] entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law: *Provided, however*, That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

b. Debts contracted while a discharge is in force or after the confirmation of an arrangement shall, in the event of a revocation of the discharge or setting aside of the confirmation, have priority and be paid in full in advance of the payment of the debts which were provable in the bankruptcy or arrangement proceeding, as the case may be.

Mo. Rev. Stats. (1929), Sec. 1168:

SEC. 1168. *Employes and laborers preferred creditors.*—Hereafter when the property of any company, corporation, firm or persons shall be seized upon by any process of any court of this state, or when their business shall be suspended by the action of creditors, or be put into the hands of a receiver or trustee, then in all such cases the debts owing to laborers or servants, which have accrued by reason of their labor or employment, to an amount not exceeding one hundred dollars to each employee, for work or labor performed within six months next preceding the seizure or transfer of such prop-

erty, shall be considered and treated as preferred debts, and such laborers or employes shall be preferred creditors, and shall be first paid in full; and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs. Any such laborer or servant desiring to enforce his or her claim for wages under this article shall present a statement under oath showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person or court charged with such property, within ten days after the seizure thereof on any execution or writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver or trustee; and thereupon it shall be the duty of the person or court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized: *Provided,* That any person interested may contest any such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property; and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof before any part thereof shall be paid.

U. S. GOVERNMENT PRINTING OFFICE: 1941

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CHARLES ELMORE

No. 33

In the Supreme Court of the United States

OCTOBER TERM, 1941

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. EMORY, ST. JAMES DISTILLERY, INC., AND ST. JAMES DISTILLERY

ON WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 33

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. EMORY, ST. JAMES DISTILLERY, INC., AND ST. JAMES DISTILLERY

ON WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The order of the Circuit Court of Phelps County (R. 2–3) was entered without an opinion. The opinion of the Springfield Court of Appeals (R. 30–40) and its opinion on motion for rehearing (R. 49–52) are reported in 143 S. W. (2d) 318.

JURISDICTION

The judgment of the Springfield Court of Appeals was entered August 22, 1940 (R. 29–30). A motion for rehearing was overruled on September

18, 1940 (R. 49). A petition for a writ of certiorari to the Supreme Court of Missouri was denied December 3, 1940 (R. 52). The petition for a writ of certiorari to this Court was filed March 1, 1941, and was granted April 7, 1941. The jurisdiction of this Court rests upon section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether section 3466 of the Revised Statutes has been modified by section 64a of the Bankruptcy Act so as to entitle wage claims, accorded priority by state statute, to take precedence in payment over a debt due the United States in an equity receivership proceeding in a state court.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 31–34.

STATEMENT

The case was tried upon a stipulation of facts (R. 23–24), the material parts of which are as follows:

The St. James Distillery became hopelessly insolvent on or before August 1936 (R. 23). On August 27, 1936, a petition (R. 10–14) was filed in the Circuit Court of Phelps County, Missouri, asking that a receiver be appointed to liquidate its assets, and on September 9, 1936, W. D. Jones was duly appointed receiver (R. 23). The assets

which came into the hands of the receiver amounted to $1,000 (R. 24). After payment of certain expenses of the receivership, there remained for distribution the sum of about $678.00 (R. 24).

Among the claims filed with the receiver were those of approximately 12 individuals totaling about $900.00 (R. 24). These claimants had performed common labor for the insolvent corporation and claimed preference in payment under the provisions of section 1168 of the Revised Statutes of Missouri, which granted priority in payment to labor claims where the individual amount did not exceed $100.00 (R. 24).

On September 23, 1935, the St. James Distillery had executed a note in the amount of $7,481.78, payable to the Industrial Bank and Trust Company of St. Louis (R. 24). The St. James Distillery defaulted in payments, and, on July 14, 1936, the note was indorsed and delivered to the Federal Housing Administrator, acting for and on behalf of the United States, and the United States, under its contract of insurance, paid the Industrial Bank and Trust Company the sum of $5,988.88, the balance due on the note (R. 24). The United States filed a claim with the receiver for payment of this amount, with interest thereon from July 14, 1936 (R. 24). Priority was claimed under the provisions of section 3466 of the Revised Statutes (R. 24).

The Circuit Court of Phelps County denied the claim of the United States to priority, allowed it

as a general claim only, and held that the labor claims were entitled to preference in payment by virtue of the Missouri statute (R. 2–3, 6–7). An appeal was taken by the United States to the Supreme Court of Missouri, and was by that court transferred to the Springfield Court of Appeals (R. 4). The Springfield Court of Appeals affirmed the order of the Circuit Court of Phelps County, holding that while the Circuit Court had committed error in failing to hold that the United States was a preferred creditor, such error was harmless inasmuch as the labor claims took precedence over the claim of the United States, and more than absorbed the assets remaining (R. 30–40). The court held that the claim of the United States was entitled to such priority as is accorded other claims of the Government under Revised Statutes, section 3466 (R. 33). It further held, however, that section 3466 was limited in application by the provisions of section 64a of the Bankruptcy Act, which subordinates claims of the United States to those of wage earners (R. 34–37). A rehearing was denied (R. 49–52), and a petition for a writ of certiorari was denied by the Supreme Court of Missouri on December 3, 1940 (R. 52).

SPECIFICATION OF ERRORS TO BE URGED

The Springfield Court of Appeals of Missouri erred:

1. In holding that in a state insolvency proceeding labor claims are entitled to priority over a debt due the United States.

2. In holding that wage claims entitled to priority under section 64a of the National Bankruptcy Act are entitled to the same priority in nonbankruptcy proceedings, notwithstanding the provisions of section 3466 of the Revised Statutes.

3. In holding that section 3466 of the Revised Statutes should be construed so as to permit prior payment of labor claims.

4. In holding that a state statute providing for priority of payment of wage claims in a state insolvency proceeding is not in conflict with section 3466 of the Revised Statutes.

5. In failing to hold that state statutes providing for priority of payment are wholly inapplicable to a claim of the United States under section 3466 of the Revised Statutes.

6. In failing to hold that the United States was entitled to priority in payment.

7. In affirming the judgment of the Circuit Court of Phelps County.

SUMMARY OF ARGUMENT

Upon assignment to the Federal Housing Administrator, acting on behalf of the United States, the claim in controversy became that of the United States and was entitled to such priority as is accorded any claim of the United States under section 3466 of the Revised Statutes. The court below so held. The court erred, however, in concluding that the priority granted by section 3466 of the Revised Statutes is limited in nonbankruptcy proceedings to that provided by the

Bankruptcy Act, and that wage claims are therefore entitled to priority over those of the United States in conformity with the provisions of section 64a of the Bankruptcy Act.

Section 3466 of the Revised Statutes directs the prior payment of all debts owing to the United States. Section 64a of the Bankruptcy Act grants a limited priority to wage claims over all unsecured claims of the United States and the states places nonlien tax claims of the United States and the states on a parity, and accords the latter priority over unsecured claims of the United States other than for taxes. Section 64a, however, has no application in terms to proceedings other than bankruptcy, and in all other insolvency proceedings claims of the United States, whether for taxes or otherwise, have been held entitled to priority over unsecured claims of wage earners and the states. This distinction has been consistently recognized and enforced by this Court and by the state and lower federal courts, and has always been acted upon by the Government.

2. There is no occasion now to announce a different rule. The failure of Congress to modify expressly section 3466 in conformity with section 64a of the Bankruptcy Act was not inadvertent. In legislating on the subject of priorities in the Bankruptcy Act of 1898, Congress was undoubtedly aware of the general priority granted by section 3466, and could not have intended by mere implication to modify in nonbankruptcy proceedings a

rule of a hundred years' standing. The nature of the priority provisions of the Bankruptcy Act confirms this view. The fact that they deal with all claims, those of the states and individuals, as well as those of the United States, forcibly suggests that they were intended to apply only to such proceedings as are completely regulated by the Bankruptcy Act. That act certainly has no general application to insolvency proceedings in the state courts and an intention to give it piecemeal effect in such proceedings cannot reasonably be implied. The results which would follow from enforcing section 64a in such manner forbids a contrary conclusion.

ARGUMENT

THE PRIORITY ACCORDED CLAIMS OF THE UNITED STATES BY REVISED STATUTES, SECTION 3466, IS NOT LIMITED IN APPLICATION BY THE PROVISIONS OF THE BANKRUPTCY ACT SAVE IN PROCEEDINGS UNDER THAT ACT

The court below held that claims of the United States acquired under the National Housing Act prior to the appointment of a receiver are entitled to such priority as is accorded other claims of the United States under Revised Statutes, section 3466. The decision in this aspect is in accord with the uniform ruling of other courts,[1] and is plainly cor-

[1] *In re Dickson's Estate*, 197 Wash. 145; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Korman* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); cf. *In re Hansen Bakeries, Inc.*, 103 F. (2d) 665, 666 (C. C. A. 3d); *In re Miller*, 105 F. (2d) 926, 927-928 (C. C. A. 2d); *In re Stamford Auto Supply Co.*, 25 F. Supp. 530, 531 (N. D. Tex.).

rect.[2] The court further held, however, that all claims of the United States are subordinate to those of wage earners. The Court expressly recognized that the states are without power to estab-

[2] Upon assignment to the Federal Housing Administrator acting on behalf of the United States, the claim became that of the United States and the United States became entitled to enforce it. *United States* v. *Summerlin*, 310 U. S. 414, 416. Save as limited by the provisions of other statutes (*Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 238–239; *United States* v. *Guaranty Trust Co.*, 280 U. S. 478), section 3466 extends to all claims of the United States, including those founded on negotiable instruments, or commercial transactions. *United States* v. *Fisher*, 2 Cranch 358; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134; cf. *United States* v. *Summerlin*, 310 U. S. at 416–417. There is nothing in the National Housing Act evidencing an intention to withhold priority from claims acquired thereunder. The Act contains no separate and independent provisions for the securing of such claims. Cf. *Cook County National Bank* v. *United States*, 107 U. S. 445, 449; *United States* v. *Guaranty Trust Co.*, 280 U. S. at 485. The granting of priority would not defeat the purpose of the Act to encourage private persons to advance funds for housing improvements and construction. Cf. *United States* v. *Guaranty Trust*, 280 U. S. at 484. The Act authorizes the Administrator to insure loans of financial institutions up to an amount substantially in excess of probable losses, and the contractors, material men and laborers, receive payment in cash out of the insured loans and are not required to look to the credit of the house owners for compensation. See Brief in Opposition, *City of New York* v. *United States*, No. 707, October Term 1940. Nor is there any provision in the Act subjecting the Administrator to the same law which governs private persons engaged in similar activities. Cf. *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236. As the court below concluded, any limitation of the priority granted by section 3466 must therefore be found, if at all, in the Bankruptcy Act.

lish a priority in conflict with that prescribed by section 3466 (cf. *Field* v. *United States*, 9 Pet. 182, 201; *United States* v. *Oklahoma*, 261 U. S. 253, 260; *Spokane County* v. *United States*, 279 U. S. 80, 90). But it concluded that that section should be applied in nonbankruptcy proceedings in conformity with the policy embodied in section 64a of the Bankruptcy Act, which gives a limited priority to wage claims over those of the United States, and that, subject to the limitations as to time and amount prescribed by the Bankruptcy Act, the priority accorded wage claims by the Missouri statute is valid. While the decision is limited to wage claims, the principle on which it proceeds is one of broad application and would extend equally to any other claim which is placed on a parity with or accorded priority over those of the United States under the Bankrutcy Act. The decision, we submit, disregards settled principles and is plainly incorrect.

Section 3466, expressly declares that "debts due to the United States shall be first satisfied" out of the estate of the insolvent debtor. The statute is to be "liberally construed" to secure the public revenues (*Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 487; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134) and those who seek to defeat the priority of the United States have the burden of showing that the Act is inapplicable. *Beaston* v. *Farmers' Bank*, *supra*; *Bram-*

well v. *United States Fidelity & Guaranty Co.*, *supra*.

Under any permissible canon of construction, however, section 64a of the Bankruptcy Act affords no basis for a limitation of the priority of the United States in nonbankruptcy proceedings. Section 64a[3] provides that wage claims, not exceeding $600, earned within three months of the commencement of the bankruptcy proceedings, are entitled to priority over unsecured claims of the United States and the states for taxes; nonlien tax claims of the United States and the states are placed on a parity; and the latter are entitled to priority over unsecured claims of the United States other than for taxes. Section 64a, however, extends in terms only to proceedings under the Bankruptcy Act, and in all other insolvency proceedings it has heretofore been the settled rule that, under section 3466, claims of the United States, whether for taxes or other debts owing to the Government, are entitled to priority over unsecured claims of wage earners and the states. *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Korman* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); *Piedmont Cor-*

[3] The priority provisions of paragraphs (a) and (b) of section 64 of the Bankruptcy Act of 1898 and amendatory acts were included with amendments in 64a by the Act of June 22, 1938, 52 Stat. 840, 874.

poration v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525 (N. D. Ga.); *City of New York* v. *United States*, 284 N. Y. 713, certiorari denied, 312 U. S. 696; *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221; see *Rogge*, The Differences in the Priority of the United States in Bankruptcy and in Equity Receiverships, 43 Harv. L. Rev. 251.[1]

This Court has expressly recognized that the order of priority established by section 64a of the Bankruptcy Act has no application outside of

[1] In bankruptcy proceedings, a claim for a penalty is not allowable save for the amount of the pecuniary loss (Sec. 57j of the Bankruptcy Act: *United States* v. *Birmingham Trust & Sav. Co.*, 258 Fed. 562, 564 (C. C. A. 5th), certiorari denied, 251 U. S. 550); and claims of the United States, whether for taxes or otherwise, are subordinate to those of the states or individuals secured by general liens under section 67f (*United States F. & G. Co.* v. *Sweeney*, 80 F. (2d) 235 (C. C. A. 8th); *Claude D. Reese, Inc.*, v. *United States*, 75 F. (2d) 9 (C. C. A. 5th); *In re Caswell Constr. Co.*, 13 F. (2d) 667 (N. D. N. Y.)). In other insolvency proceedings, however, it has been held that the priority of the United States can be defeated only by a specific lien (*United States* v. *Knott*, 298 U. S. 544; *New York* v. *Maclay*, 288 U. S. 290) and that a penalty is a "debt" within the application of Revised Statutes, section 3466 (*Spokane County* v. *United States*, 279 U. S. 80; *In re Assignment for Benefit of Creditors of T. J. Simpson, Inc.*, 15 N. Y. S. (2d) 1021).

The court below did not and could not purport to hold that Mo. Rev. Stat. 1929 (sec. 1168), gave wage claims a specific lien on the debtor's property. The statute merely gives laborers a preference, subordinate to holders of specific liens. *Fitzgerald* v. *Meyer*, 65 Mo. App. 665; *Cunningham* v. *Mining Co.*, 103 Mo. App. 398, 76 S. W. 487.

bankruptcy proceedings. In *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, the Court held that by virtue of section 10 of the Act of March 21, 1918, providing that carriers under federal control should be subject to "all laws and liabilities as common carriers," the Director General of Railroads was not entitled to any preference or priority not accorded private carriers. The Court recognized, however, that debts owing to the United States were entitled to priority under Revised Statutes, section 3466, in equity receivership, although not accorded such priority under the Bankruptcy Act as it then stood, and it was in this view that the Court found it necessary to determine the effect of section 10. The Court said (pp. 238–239):

> Under *Davis* v. *Pringle*, 268 U. S. 315, if the estate of the Rathbone Manufacturing Company were being administered under the Bankruptcy Act the claims of the Director General would not be entitled to preference. It is also plain, under *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483; *Price* v. *United States*, *id.* 492; and *United States* v. *Butterworth-Judson Corporation*, *supra*, that in proceedings like the present one, debts due directly to the United States, nothing else appearing, are ordinarily entitled to priority under R. S., § 3466. Decision of this

> cause, therefore, must turn upon the effect to be given § 10, Act of 1918, *supra*.[5]

In *Spokane County* v. *United States*, 279 U. S. 80, the Court held that a tax claim of the United States was entitled to priority over a state tax claim in a nonbankruptcy proceeding under section 3466, although the court was clearly aware that such claims were placed on a parity in bankruptcy proceedings. After concluding that Congress had constitutional power to establish such priority the Court said (p. 93):

> There remains only to determine what priority it [Congress] has conferred. It may withhold it or vary it, and it has sometimes done so. * * *

The reference in the opinion to the instances in which Congress had varied the priority of the United States could only have reference to the familiar one of the Bankruptcy Act.[6]

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[5] In the *Davis* case (*Davis* v. *Pringle*, 268 U. S. 315) this Court had held that the United States was not a "person" within the meaning of section 64 (b) (5) of the Bankruptcy Act of 1898 as originally enacted, which accorded a limited priority to "debts owing to any person who by the laws of the states or the United States is entitled to priority," and that accordingly the United States was not entitled to any priority other than that expressly granted for taxes under the then section 64 (a).

[6] In *Cook County Nat. Bank* v. *United States*, 107 U. S. 445, the court held that R. S. sec. 3466 was inapplicable to an insolvent national bank since the provisions of the act

The state and lower federal courts have similarly adverted to the established distinction between the order of priority in bankruptcy and in other insolvency proceedings. See, e. g., *Claude D. Reese, Inc.*, v. *United States*, 75 F. (2d) 9 (C. C. A. 5th); *Liberty Mutual Ins. Co.* v. *Johnson Shipyards Corp.*, 6 F. (2d) 752 (C. C. A. 2d), aff'd *sub nom. Stripe* v. *United States*, 269 U. S. 503; *Clough* v. *Superior Equipment Co.*, 157 Atl. 306 (Del.); *Matter of Lincoln Chair & Novelty Co.*, 274 N. Y. 353, 359; cf. *Carpenter* v. *Wabash Ry. Co.*, 103 F. (2d) 996, 1000 (C. C. A. 8th), reversed on other grounds, 309 U. S. 23. Accordingly, prior to the instant decision, these courts have uniformly rejected any contention that the priority accorded by Revised Statutes, section 3466, is qualified by the Bankruptcy Act. *Piedmont Corporation* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525 (N. D., Ga.); *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221; *In re Assignment for Benefit of Cred-*

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authorizing the formation of national banks were inconsistent with the granting of priority to the United States. The court rejected the contention that the subsequent enactment of the Bankruptcy Act of 1867, granting the United States a priority similar to that accorded by R. S. sec. 3466, required a different result. The court said (pp. 451–452): "This view of the banking law is not affected by the subsequent enactment in 1867 of the Bankruptcy Act, giving priority to the demands of the United States against the estates of bankrupts. That enactment was dealing with the estates of persons adjudged to be insolvent under that law, and covers only the distribution of their estates. It has no further reach."

itors of T. J. Simpson, Inc., 15 N. Y. S. (2d) 1021. The cases in which such contention has been advanced are significantly few, undoubtedly reflecting the general assumption that section 64a of the Bankruptcy Act has no application outside of bankruptcy proceedings. See *Rogge*, The Differences in the Priority of the United States in Bankruptcy and in Equity Receiverships, 43 Harv. L. Rev. 251.

Indeed, the limitation of section 64a to bankruptcy proceedings has apparently been regarded by this Court as so well established as ordinarily not to require special mention. It was clearly assumed, however, in *Price* v. *United States*, 269 U. S. 492, and *Stripe* v. *United States*, 269 U. S. 503, holding that taxes are "debts" within the meaning of Revised Statutes, section 3466, and that a tax claim of the United States was therefore entitled to priority. There was no necessity of deciding this question if the Bankruptcy Act, which expressly grants priority to federal and state tax claims, had been deemed to control the measure of the United States' priority in non-bankruptcy proceedings. The circuit court of appeals expressly recognized as much in one of these cases. See *Liberty Mutual Ins. Co.* v. *Johnson Shipyards Corp.*, 6 F. (2d) 752, 753 (C. C. A. 2d).[7]

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[7] This Court subsequently declared it "plain" that under the *Price* and other decisions the United States was entitled to priority in an equity receivership, notwithstanding the denial of such priority under the Bankruptcy Act. See *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 238–239.

And the decision in *Gurantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, in which this Court held that in bankruptcy proceedings, nontax claims of the United States are subordinate to wage claims, was premised on the assumption that Revised Statutes, section 3466, would have required a different result in any other insolvency proceeding, the question presented being whether the United States was bound by the Bankruptcy Act or could, in disregard thereof, enforce the priority accorded by section 3466.

The state and lower federal courts have made the same assumption in according priority to claims of the United States in nonbankruptcy proceedings without any mention of section 64a. *People of New York* v. *United States*, 106 F. (2d) 210 (C. C. A. 3d); *United States* v. *Bliss*, 40 F. (2d) 935 (D. Neb.); *Hammond* v. *Carthage Sulphite Pulp & Paper Co.*, 34 F. (2d) 155 (N. D. N. Y.); *United States* v. *Porter*, 24 F. (2d) 139 (D. Idaho); *Stover* v. *Scotch Hills Coal Co.*, 4 F. (2d) 748 (W. D. Pa.); *United States* v. *San Juan County*, 280 Fed. 120 (W. D. Wash.); *Gerson, Beesley & Hampton* v. *Shubert Theatre Corp.*, 7 F. Supp. 399 (S. D. N. Y.); *West Coast Power Co.* v. *Southern Kansas Gas Co.*, 20 Del. Ch. 130; *Tropical Printing Co.* v. *Union Title Guarantee Co.*, 180 La. 702; *Parks* v. *Central Door & Lumber Co.*, 102 P. (2d) 706 (Ore. 1940); *Bowes* v. *United States*, 127 N. J. Eq. 132; *Decker* v. *Decker Bldg. Material Co.*, 118 N. J. Eq. 177.

As may be gathered from the decisions cited, the Government in practice has consistently acted upon the view that the priority accorded by section 3466 of the Revised Statutes is not limited in any way by the Bankruptcy Act in nonbankruptcy proceedings. A practice "so long and so general" should not now be disturbed even if its legality were doubtful. *United States* v. *Bank of North Carolina*, 6 Pet. 29, 39–40; *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524–525.

The conclusion reached by the court below is thus novel and unprecedented. None of the cases which the court cited furnish the slightest support. As shown above, *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, is to the contrary, and supports the Government's position. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, is not in point. In that case, this Court held that section 3466 was inapplicable to claims of the United States arising under Title II of the Transportation Act of 1920 which authorized loans to railroads and made specific provision for security. The Court concluded that to grant priority to such claims would impair the credit of the railroads and thus defeat the purpose of the Transportation Act and that the express inclusion by Congress of the provision for security clearly manifested a purpose not to rely on the priority provided by section 3466. As the court below itself expressly recognized, however, claims of the United States acquired under the National

Housing Act are entitled to the same priority accorded other claims of the United States under section 3466. In *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 490, the Court merely held that a resolution of the board of directors of an insolvent bank giving control and possession of the bank's assets to a state superintendent of banks for purposes of liquidation was "an act of bankruptcy" or "voluntary assignment" within the meaning of section 3466, even though the bank was not subject to the Bankruptcy Act. The language in the opinion (269 U. S. at 490) that the application of section 3466 was not intended to depend on whether the debtor was one to whom the Bankruptcy Act applied contains no suggestion that the priority of the United States is the same whether the proceeding is in bankruptcy or otherwise. The case was subsequently cited by this Court for the contrary conclusion. See *Mellon* v. *Michigan Trust Co.*, 271 U. S., at 238–239.[8]

2. There is no occasion to overturn this settled practice and course of decision. The failure of Congress to amend section 3466 to conform with the priority provisions of the Bankruptcy Act

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[8] The statement in *United States* v. *Marxen*, 307 U. S. 200, 206, that the generality of Revised Statutes, section 3466, is restricted by legislative intent, as disclosed by the statutes had reference to a very limited class of cases, as appears from the citation of the *Mellon* and *Guaranty Trust Co.* cases.

was not inadvertent. In each of the Bankruptcy Acts prior to the Act of July 1, 1898, Congress had expressly reaffirmed the general priority of the United States (Act of April 4, 1800, section 62, 2 Stat. 19, 36; Act of August 19, 1841, section 5, 5 Stat. 440, 444; Act of March 2, 1867, section 28, 14 Stat. 517, 536); and could not have been unmindful of the general provisions of section 3466 when it legislated on the subject of priorities in the Bankruptcy Act of 1898. And it is inconceivable that when Congress modified the theretofore prevailing rule with respect to priority in an act purporting to be limited to bankruptcy proceedings, it intended to repeal by mere implication a familiar rule of one hundred years' standing in all other insolvency proceedings.[9] The nature of the Bankruptcy Act confirms this view. As this Court observed in *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, 160, "The act takes into consideration * * * the whole range of indebtedness of the bankrupt, national, state and individual, and assigns the order of payment." As section 64a thus deals with the relation of claims of the United States to all other claims in bankruptcy, the plain inference is that it was enacted

[9] There is nothing in the legislative history of the Bankruptcy Act of 1898 which sheds light on the intention of Congress in this respect. See H. Rpt. No. 65, 55th Cong., 1st Sess., p. 27.

with exclusive reference to bankruptcy proceedings in which all claims are subject to the detailed regulations of the Bankruptcy Act.[10]

Moreover, the difficulties involved in enforcing, in state proceedings, the priority of wage claims over the claims of the United States in accordance with the "policy"[11] set forth in section 64a apart from the other provisions of the section, forcibly suggest that such a piecemeal transposition of the Bankruptcy Act was not intended. It is true that there is no difficulty in cases where the state statutes also accord wage claims first priority after the payment of expenses of administration. Only-

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[10] Congress may well have the power to make like provision in respect to insolvency proceedings in state courts, since the subject of bankruptcies is nothing less than "the subject of the relations between an insolvent or nonpaying or fraudulent debtor, and his creditors, extending to his or their relief" (*In re Reiman*, Fed. Cas. No. 11,673; *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 672-673) and state courts are under a duty to enforce federal enactments no less than the courts of the Union. *United States* v. *Bank of New York Co.*, 296 U. S. 463, 479. But section 64a was obviously not intended to supersede entirely the priority provisions of state insolvency laws in nonbankruptcy proceedings.

[11] Section 64a also reflects the "policy" that Government tax claims be on a parity with the tax claims of the states, and that other unsecured claims of the Government be inferior to state tax claims. Nevertheless this Court, in according priority to Government claims in state proceedings, did not extend the order of priority of 64a to state proceedings. *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 291.

a few states, however, accord wage claims such a position of preference.[12] Most states give first priority to state tax claims, wage claims being sometimes accorded a limited priority over other claims and sometimes no priority at all.[13] The state statutes, it may be observed, contained substantially the same provisions at the time the

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[12] See Stats. of Ark (Pope, 1937), secs. 97, 7610; Ill. Rev. Stat. (Smith-Hurd 1935), c. 3, sec. 70; Ind. State Ann. (Burns, 1933), sec. 40-111; Gen. Stats. of Kans. (1935), secs. 44-312; Rev. Stats. Mo. (1939), secs. 1332, 3542; Penna. Stat. Ann. (Purdon 1930) tit. 20 sec. 501, tit. 39, sec. 165, tit. 43 secs. 223, 224; Rev. Stat. of Utah Ann. (1933), secs. 49-7-1, 102-9-22; Wash. Code (Pierce 1929), secs. 9803, 9734; Wyo. Comp. Stat. (1920), secs. 4158, 6869.

[13] Code of Ala. (1923), secs. 5822, 5994; Rev. Code of Del. (1935), sec. 3351; Compiled Gen. Laws of Fla. (1927), sec. 1348; Ga. Code Ann. (1936) secs. 67-1801, 67-1802, 92-5707; Idaho Code Ann. (1932), secs. 61-102, 61-104; Ind. Stat. Ann. (Burns, 1933), secs. 6-1301, 64-2001; Code of Iowa (1939), secs. 12731, 12732; Gen. Stat. of Kans. Ann. (1935) sec. 22-701 (*Schmitz* v. *Schmitz*, 124 Kans. 546); Carroll's Ky. Stat. (Baldwin, rev. ed. 1930), sec. 4021; La. Gen. Stat. Ann. (Dart, 1939), sec. 8435; Ann. Code of Md. (1935 Supp.), art. 47, sec. 15; 1 Miss. Code Ann. (1930), sec. 3120; Rev. Code of Mont. Ann. (1935), secs. 2152, 2153, 2154; Neb. Comp. Stat. (1929), secs. 6-124, 77-204, 77-206; Rev. Stat. of N. J. (1937), sec. 54: 49-1; N. Mex. Stat. Ann. (1915), secs. 2283, 2284; N. C. Code Ann. (1939), secs. 1618, 7971 (213); Okla. Laws, 1927, c. 106, sec. 1; Ore. Code Ann. (1935 Supp.), sec. 69-722; Ore. Code Ann. (1930), sec. 69-722; Gen. Laws of R. I. (1938), c. 36, sec. 3, c. 578, sec. 33; S. D. Code (1939), sec. 57.108; Code of S. C. (1932), secs. 2571, 8376, 8782; Tex. Civil Stat. (1938), art. 7269; Rev. Stats. of Utah Ann. (1933), sec. 5-0-9; Public Laws of Vt. (1933), sec. 2926.

Bankruptcy Act of 1898 was enacted.[14] In these cases, anomalous situations are presented. The tax claims of the United States are by the Bankruptcy Act inferior to the wage claims, but on a parity with or superior to state claims, which, in turn, are superior, under state law, to the wage claims. The subordination of the claims of the United States, in contrast to the claims of the states, to wage claims would obviously defeat the "policy" reflected in the Bankruptcy Act. Congress could not have intended that the Government forego its priority in favor of labor claims, only to have a state claim, which would otherwise be entitled only to parity with like claims of the United States, raised to first rank. Cf. *Ferris* v.

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[14] *Wages first:* Ark. Dig. Stat. (Sandels & Hill 1894), sec. 110; Ill. Rev. Stat. (1895), c. 146 (a), sec. 11; Ind. Laws (Spec. Sess. 1885), c. 3, sec. 1; Mo. Rev. Stat. (1889), secs. 2538, 6761; Ore. Code & General Laws Ann. (Hill 1892), p. 1902; Utah. Rev. Stat. (1898), secs. 1344, 3689, 3670; Wash. Codes & Stat. Ann. (Bollinger 1897), secs. 6333, 5981, 5982; Wyo. Laws (1891), c. 17, sec. 21.

Taxes or other state claims prior to wages: Ala. Code (1896) secs. 4116, 126; Del. Laws (1891–1893), c. 556; Fla. Rev. Stat. (1892), secs. 410, 1909, 1945; Ind. Laws (Spec. Sess. 1881), c. 49, sec. 152; Ia. Code Ann. (1897), sec. 3078; Kans. Gen. Stat. (1897), c. 107, sec. 80, c. 158, sec. 138; Ky. Stat. (1894), secs. 3868, 3869, 4021; Acts of La. (1898), No. 170, sec. 49; Md. Pub. General Laws (1888), art. 47, sec. 15; Miss. Code Ann. (1892), sec. 3746; Mont. Pol. Code (1895), secs. 3827, 3829; Neb. Comp. Stat. (1895), sec. 565; N. J. General Stat. (1789–1895), p. 3350; N. C. Code (1883), c. 55, sec. 3682; Rev. Stat. Ohio (1890), sec. 6355; S. C. Acts (1897), No. 316, p. 502; Texas Civil Stat. (1887), secs. 2037, 4690; Vt. Stat. (1894), sec. 2503.

Chic-Mint Gum Co., 14 Del. Ch. 232; *American Type Founders Co.* v. *Nichols*, 110 Tex. 4, 8; see also *Spokane County* v. *United States*, 279 U. S. 80. The congressional purpose would likewise be defeated if an amount equal to the claim superior to that of the United States under section 64a were set aside for the satisfaction of the claim preferred by state law. Such a solution could be adopted by Congress (see *Rogge*, *supra*, p. 277) but no such intention can be inferred from section 64a.[15] None of the various theories suggested

[15] A similar problem may arise in cases where the state statute gives priority to state tax claims over private claims secured by specific liens or mortgages. (See, e. g., 1 Miss. Code. Ann. (1930), sec. 3120; Rev. Code of Mont. Ann. (1935), secs. 2152, 2153; Neb. Comp. Stat. (1929), secs. 77–206, 6–124; Ore. Code (1935 Supp.), sec. 69–702; S. D. Code (1939), sec. 57.1028.) To give priority to claims for state taxes out of property subject to a specific lien would not be in conflict with section 3466, since the priority granted by section 3466 extends only to the property belonging to the debtor at the time of the insolvency proceeding and the debtor's property may properly be regarded as limited to his equity. See Brief for the United States in *United States* v. *Texas*, No. 44, this Term; See *Spokane County* v. *United States*, *supra*, at 91; *Blair*, The Priority of the United States in Equity Receiverships, 39 Harv. L. Rev. 1, 29–30; cf. *New York* v. *Maclay*, 288 U. S. 291, 292–293. In this view, it is a matter of indifference to the United States to whom the property interest of the mortgagee is awarded, since in no event can the United States share in that interest. The priority granted to wage earners, however, is based on considerations of policy and applies even though the property belong to the debtor at the time of the commencement of the proceedings, and it could not have been intended that the wage earner priority would be enforced where the beneficiary would be the state and not the wage earner.

as possible solutions of the circuity of lien problem (see *Benson*, Circuity of Lien—A Problem in Priorities, 19 Minn. L. Rev. 139; A First Rate Legal Puzzle—A Problem in Priorities, 29 Ill. L. Rev. 952) are relevant, since the priority accorded wage earners under the Bankruptcy Act was intended for the benefit of wage earners only and it cannot therefore be made the basis of preferring claimants other than wage earners at the expense of the United States.

The decision below presents other difficulties. Section 64a places the claims of the United States other than for taxes and the claims of landlords for one year's rent on a parity, both below labor claims. Some state statutes, however, give landlord claims first preference. See Code of Md. Ann. (1935 Supp.), art. 47, sec. 15A; N. J. Gen. Stat. (1789–1895), p. 79; Penna. Stat. Ann. (Purdon 1930), tit. 39, secs. 216, 218. See also Const. of Alabama (1901), sec. 250 (giving holders of bank notes and depositors first priority; Wyo. Comp. Stat. (1920), sec. 5169 (same); Code of S. C. (1932), sec. 8782 (giving judgment against railway for personal injuries and judgment by municipality for injury to streets a first lien and preference over mortgages, etc.). Moreover, the Government's priority would vary in the same state according to the nature of the proceeding, for under the statutes of a number of states the order of priority varies according to whether the proceeding involves a receivership, administration

of decedent's estate, assignment for the benefit of creditors, etc.[14] Such a result is in direct conflict with the express provisions of Revised Statutes, section 3466.

There are other equally compelling considerations which require the rejection of the construction adopted by the court below. At the time the Bankruptcy Act was enacted in 1898 a number of states expressly gave tax and, in some instances, all claims of the United States, first preference after administration expenses, either alone[15] or in conjunction with similar claims of the states.[16] These statutes were certainly not intended to be

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[14] See, e. g., Code of Iowa (1939), secs. 12719, 12731, 12732; Ind. Stat. Ann. (Burns 1933), secs. 6-1301, 40-111; Gen. Stat. of Kans. Ann. (1935), secs. 44-312, 22-701 (*Schmitz* v. *Schmitz*, 124 Kans. 546); Rev. Stat. of Utah Ann. (1933), secs. 102-9-22, 5-40-9; Wis. Stat. (1939), secs. 313.16, 128.17.

[15] *Government Claims Alone First:* Idaho Rev. Stat. (1887), sec. 5606; Acts and Resolves of Mass. (1881), c. 159; Minn. Stat. (1894), sec. 4734; Neb. Comp. Stat. (1895), sec. 2763; Laws of Nev. (1897), c. 106, sec. 195; N. H. Pub. Stat. (1891), c. 201, sec. 32; Rev. Stat. Ohio (1890), sec. 6090; R. I. General Laws (1896), c. 215, sec. 16, c. 274, secs. 27, 58; Va. Code (1887), sec. 2660; W. Va. Code (1891), c. 85, sec. 25; Wis. Stat. (Sanborn & Berryman, 1898), sec. 3852.

[16] *Government and State Claims on a Parity Ahead of Wages:* General Stat. of Conn. (1888), secs. 532, 575; Code of Ga. (1895), secs. 3234, 2792, 2793; Me. Rev. Stat. (1883), c. 70, sec. 40; Mass. Gen. Stat. (2d ed. 1860), c. 118, sec. 96; Ann. Stat. of Mich. (Howell, 1882), sec. 8749 L; Minn. Stat. (1894), secs. 4231, 4529; N. H. Pub. Stat. (1891), c. 201, sec. 32; Rev. Code of N. D. (1895), sec. 6070; Rev. Stat. of Ohio (1890), sec. 6355; Utah Rev. Stat. (1898), sec. 3870; Vt. Stat. (1894), sec. 2503; Wis. Stat. (Sanborn & Berryman, 1898), sec. 1700.

"amended" by the Bankruptcy Act and they cannot be enforced in accordance with the supposed policy of section 64a without amendment by the state legislatures.

It is true that the difficulties suggested do not arise in this case. But it cannot seriously be suggested that Congress by mere implication intended in 64a to repeal Revised Statutes, section 3466, to the extent that the provisions of a particular state statute permits the application of the priority provisions of section 64a in conformity with the purpose of that section. Uniformity is the principle of the Bankruptcy Act and section 3466 alike.

Congress manifested its understanding that section 3466, was unaffected by the Bankruptcy Act in nonbankruptcy proceedings when it amended the latter legislation in the Act of May 27, 1926, 44 Stat. 662, 667, following this Court's decision in *Davis* v. *Pringle*, 268 U. S. 315. In the *Davis* case this Court had held that the United States was not a "person" within the meaning of the then section 64 (b) (5), the effect of the decision being to limit the United States priority to that expressly granted for taxes in the preceding subdivision (a). If the decision below is correct, the Bankruptcy Act of 1898, as construed in the *Davis* case, repealed Revised Statutes, section 3466, *pro tanto*. The Congress evi-

dently thought otherwise, however, for it undertook to secure the priority given by section 3466 to nontax claims merely by defining "person" to include the United States. The conclusion is the same even if the 1926 Act be viewed as a construction of the original enactment and a disapproval of the *Davis* decision. Cf. *United States* v. *Hutcheson*, 312 U. S. 219. In this view, the then paragraph (b) (5) of section 64 must be construed as though it had always been intended to include the United States. Viewed in this light, section 64 reflected the intention of Congress not to modify section 3466 in nonbankruptcy proceedings. For, as so construed, it made explicit reference to section 3466 but omitted any provision limiting its application in nonbankruptcy proceedings, a sufficient indication that the omission was deliberate. Moreover, the language of the then subdivision (b) (5) "debts owing to any person who by the laws of the States or the United States is entitled to priority," clearly has reference to the priority accorded by such laws independently of the Bankruptcy Act, thus indicating that Congress had no intention of modifying those laws in nonbankruptcy proceedings, although their enforcement in bankruptcy was necessarily limited by other provisions of section 64. This is certainly true as to the state laws referred to and it would be highly artificial to impute to Congress

a different intention as to the federal law, section 3466.[19]

Where Congress has intended to extend the priority provisions of the bankruptcy laws to non-bankruptcy it has expressly so provided.[20] Several bills have been introduced for the purpose of extending the priority awarded wage claims by

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[19] The legislative history of the 1926 act is not illuminating. See S. Rept. No. 406, 69th Cong., 1st Sess.; H. Rept. No. 877, 69th Cong., 1st sess.

The states likewise have legislated on the assumption that the priority given the United States by section 64a is not controlling in nonbankruptcy proceedings. Many state statutes of relatively recent date expressly give first preference, after administration expenses, to tax, or in some instances, to all claims of the United States, either alone (California Probate Code (1937), sec. 950; Code of Iowa (1939), sec. 12719; Rev. Stat. of Me. (1930), c. 79, sec. 1; 6 Ann. Laws of Mass. (1933), c. 198, sec. 1, c. 216, sec. 118; Minn. Stat. (Mason, 1927), secs. 8992–108, 8827; Neb. Comp. Stat. (1929), sec. 30–615; Nevada Comp. Laws (1929), sec. 9795; Consol. Laws of N. Y. (Cahill, 1930), c. 12, sec. 188; Ohio Gen. Code Ann. (Page, 1937), sec. 10509–121; Gen. Laws of R. I. (1938), c. 578, sec. 33; Va. Code Ann. (1936), sec. 5390; W. Va. Code Ann. (1937), sec. 4167) or in conjunction with like claims of the states (Conn. Gen. Stat. (1930), secs. 4870, 4971; Ga. Code Ann. (1936), sec. 113–1508; 7 Ann. Laws of Mass. (1933), c. 216, sec. 118; Minn. Stat. (Mason, 1927), sec. 9789; Public Laws of N. H. (1926), c. 401, sec. 31, c. 303, sec. 22; N. D. Comp. Laws (1913), sec. 8417; N. M. Stat. Ann. (1915), sec. 2284; Okla. Laws, 1927, c. 106, sec. 1; Tenn. Code (Williams, 1934), sec. 8286; Wis. Stat. (1939), sec. 313.06).

[20] The provisions of section 77n of the Bankruptcy Act giving claims for personal injuries to employees of railroads a preferred status were expressly extended to equity receivership by the Act of August 11, 1939, 53 Stat. 1406.

section 64a to proceedings outside of bankruptcy (H. R. 2672, 77th Cong., 1st sess.; H. R. 992, 76th Cong., 1st sess.; H. R. 6557, 75th Cong., 1st sess.) but have all failed of enactment. The introduction of such proposals is persuasive of a prevailing understanding that legislation is required to accomplish the desired result, and the failure of Congress to enact the suggested amendment is likewise evidence that Congress is unwilling to modify the priority accorded the United States in nonbankruptcy proceedings under Revised Statutes, section 3466.

No clearer case could be imagined for the application of the rule that "repeals by implication are not favored." *United States* v. *Borden Co.*, 308 U. S. 188, 198–199. The rule has not been modified by the decision in *United States* v. *Hutcheson*, 312 U. S. 219. In that case the Court held that Congress in the Norris-LaGuardia Act had "placed its own meaning" upon section 20 of the Clayton Act and that the Court was bound by that construction regardless of its prior decisions on the same question. In this case, however, there is no suggestion that section 64a of the Bankruptcy Act was in any sense a construction of the original meaning of Revised Statutes, section 3466, or a "disapproval" of the Court's decisions construing the earlier enactment. Cf. *United States* v. *Hutcheson*, *supra*, at 236. The sole question is whether by mere implication the Congress in-

tended to repeal the section 3466 *pro tanto*. The question should be answered in the negative on the basis of settled canons of construction alone. Any doubt should be dispelled, however, by the affirmative manifestations of a congressional intention to limit the effect of section 64a to proceedings in bankruptcy in accordance with its express provisions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be reversed.

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OCTOBER 1941.

APPENDIX

Section 3466 of the Revised Statutes (31 U. S. C., sec. 191):

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 64 of the Bankruptcy Act, as amended (11 U. S. C., Supp. V, sec. 104):

> a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the rea-

sonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under this title, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And*

provided further, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in [So in original. Probably should read "is".] entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law: *Provided, however*, That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

b. Debts contracted while a discharge is in force or after the confirmation of an arrangement shall, in the event of a revocation of the discharge or setting aside of the confirmation, have priority and be paid in full in advance of the payment of the debts which were provable in the bankruptcy or arrangement proceeding, as the case may be.

Mo. Rev. Stats. (1929), Sec. 1168:

SEC. 1168. *Employes and laborers preferred creditors.*—Hereafter when the property of any company, corporation, firm or persons shall be seized upon by any process of any court of this state, or when their business shall be suspended by the action of creditors, or be put into the hands of a receiver or trustee, then in all such cases the debts owing to laborers or servants, which have accrued by reason of their labor or employment, to an amount not exceeding one hundred dollars to each employee, for work or labor performed within six months next preceding the seizure or transfer of such prop-

erty, shall be considered and treated as preferred debts, and such laborers or employes shall be preferred creditors, and shall be first paid in full; and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs. Any such laborer or servant desiring to enforce his or her claim for wages under this article shall present a statement under oath showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person or court charged with such property, within ten days after the seizure thereof on any execution or writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver or trustee; and thereupon it shall be the duty of the person or court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized: *Provided*, that any person interested may contest any such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property; and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof before any part thereof shall be paid.

SUPREME COURT OF THE UNITED STATES.

No. 33.—October Term, 1941.

The United States of America, Petitioner, vs. Harry S. Emory, St. James Distillery, Inc., and St. James Distillery, Respondents.	On Writ of Certiorari to the Springfield Court of Appeals, State of Missouri.

[December 15, 1941.]

Mr. Justice Byrnes delivered the opinion of the Court.

This case involves the application of § 3466 of the Revised Statutes to a claim of the United States under the National Housing Act in an equity receivership proceeding in a state court.

The St. James Distillery, a corporation, executed a note to the Industrial Bank and Trust Company of St. Louis on September 23, 1935. On July 14, 1936 the Bank endorsed the note and delivered it to the Federal Housing Administration, acting on behalf of the United States, under a contract of insurance and guaranty provided for in Title I of the National Housing Act. The United States, through the Federal Housing Administration, on that date reimbursed the Bank in the amount of $5988.88, the balance due on the note. Emory, claiming wages due him, filed a petition on August 27, 1936 in the Circuit Court of Phelps County, Missouri, alleging that the St. James Distillery was hopelessly insolvent and praying that a receiver be appointed. On September 9 the Circuit Court found all the issues in Emory's favor and appointed a receiver who took possession of the corporate assets.

After deductions for the costs of the receivership, the assets available for distribution totaled $678. Against this amount the wage claims of "about twelve individuals" were filed. The separate amounts of these claims were neither stipulated nor determined by the courts below; their aggregate was "about $900". The United States, on behalf of the Federal Housing Administration, filed a claim for the $5988.88 due on the note. The wage

claimants asserted priority under § 1168 of the Revised Statutes of Missouri;[1] the United States asserted priority under § 3466 of the Revised Statutes of the United States.[2]

The Circuit Court of Phelps County decided that the claim of the United States should be treated as an ordinary claim against the estate, and that the wage claims should be paid first. On appeal, the Springfield Court of Appeals held that the claim of the United States on behalf of the Federal Housing Administration was accorded preference over ordinary claims by § 3466 of the Revised Statutes of the United States. Consequently, it was of the opinion that the Circuit Court had erred in treating the claim of the United States as an ordinary claim. However, it held further that the error was of no consequence, since the Missouri statute granted priority to wage claims even over other preferred claims and no assets would remain after they had been satisfied. Rehearing was denied, and the Supreme Court of Missouri denied a petition for certiorari. We granted certiorari because of the importance of the question and because of an asserted conflict of decisions.

The applicability of § 3466 to this case is clear. The section applies in terms to cases "[1] in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or [2] in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, . . . [or] [3] in which an act of bankruptcy is committed." This case falls within the third category. It is agreed that the St. James Distillery was insolvent "on or before August 1936" and that in response to a creditor's petition a receiver was appointed to liquidate the cor-

[1] Mo. Rev. Stat. (1929) § 1168, so far as pertinent, provides: "Hereafter when the property of any company, corporation, firm or person shall be seized upon by any process or any court of this state, or when their business shall be . . . put into the hands of a receiver or trustee, then in all such cases the debts owing to laborers or servants, which have accrued by reason of their labor or employment, to an amount not exceeding one hundred dollars to each employee, for work or labor performed within six months next preceding the seizure or transfer of such property, shall be first paid in full; and if there be not sufficient to pay them in full then the same shall be paid to them pro rata, after paying the costs."

[2] U. S. Rev. Stat. § 3466 (U. S. C., Title 31, Section 191) provides: "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

porate assets. The appointment of a receiver under such circumstances is among the most common examples of an "act of bankruptcy". *Cf.* § 3(a)(1) of the Bankruptcy Act, U. S. C., Title 11, § 21(a)(4).

Just such proceedings as this, therefore, are governed by the plain command of § 3466 that "debts due to the United States shall be first satisfied." The purpose of this section is "to secure adequate public revenues to sustain the public burden" (*United States* v. *State Bank of North Carolina*, 6 Pet. 29, 35), and it is to be construed liberally in order to effectuate that purpose (*Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 487). In view of this language, purpose, and rule of construction, the priority asserted here by the United States appears to be securely established.

The court below, however, held otherwise. In granting priority to the wage claims over that of the United States, it relied upon Missouri law. It recognized, as the authorities obliged it to recognize,[3] that the state statute could not prevail if it was in conflict with § 3466. But it decided that no such conflict arose, for the reason that § 3466 had been impliedly modified by § 64a of the Bankruptcy Act,[4] which, like the Missouri statute, requires that wage claims be satisfied before those of the United States.

The judgment below must have rested upon either of the following theories: that Congress intended by § 64a of the Bankruptcy Act to subordinate claims of the United States to wage claims in non-bankruptcy proceedings generally; or that Congress intended by § 64a to modify § 3466 only so far as to grant priority over the United States to wage claimants in state non-bankruptcy proceed-

[3] Field *v.* United States, 9 Pet. 182, 200; United States *v.* Oklahoma, 261 U. S. 253; Barnett *v.* American Surety Company of New York, 77 F. 2d 225; In re Dickson's Estate, 197 Wash. 145, 154-155. Cf. United States *v.* Summerlin, 310 U. S. 414.

[4] Section 64(a) of the Bankruptcy Act, so far as pertinent, provides: "The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estate, and the order of payment, shall be (1) . . . [costs of preserving the estate, etc.]; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) . . . [certain expenses of creditors connected with the liquidation of the estate]; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof . . . ; and (5) debts owing to any person, including the United States, who by the laws of the United States in [is?] entitled to priority . . . ."

ings when they would be entitled to such priority by otherwise applicable state law.

There is a difficulty common to both theories which we regard as insurmountable. Neither the language of § 64a nor the Congressional history of the legislation here involved supports the proposition that § 64a was intended to eliminate, either partially or wholly, the priority of claims of the United States in non-bankruptcy proceedings.

The provisions of § 3466 have been in force since 1797, without significant modification. 1 Stat. 515. The first three federal bankruptcy acts[5] specifically preserved the priority of the United States over all other claimants in bankruptcy proceedings in the federal courts. Section 64 of the Bankruptcy Act of 1898,[6] however, disturbed this state of affairs. It provided an order of distribution of the assets of bankrupt estates in which certain wage claims preceded non-tax claims of the United States. While § 64 has been altered since 1898 in several particulars, the priority of wage claims over non-tax claims of the United States has continued. Consequently, we must look to the Act of 1898 for evidence that the priority accorded to wage claims by § 64 was intended to apply to more than bankruptcy proceedings in the federal courts.

We find no such evidence. The entire Act of 1898, as §2 in particular plainly reveals, was designed to create federal courts of bankruptcy and to define their functions. Indeed, § 64 itself, in subdivision (a), refers to the "court"; § 1 provides that, as used in the Act, "court" means "the court of bankruptcy in which the proceedings are pending"; and § 1 also provides that "courts of bankruptcy", as used in the Act, mean the federal district courts and a

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[5] Act of 1800, c. 19, § 62, 2 Stat. 19; Act of 1841, c. 9, § 5, 5 Stat. 441; Act of 1867, c. 176, §28, 14 Stat. 517.

[6] Section 64 of the Bankruptcy Act of 1898 (30 Stat 544) provided:

"(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof . . . .

"(b) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) . . . [the costs of administration]; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority."

few other federal courts. There is no internal sign that any part of § 64 was intended to apply to state courts or to non-bankruptcy proceedings in the federal courts. We have looked in vain in the committee reports and the debate upon the bill for any external hint of such an intention.

It is not strange, therefore, that both courts and commentators have assumed that the application of § 64 of the Act of 1898 was limited to federal bankruptcy proceedings, and that the priority of claims of the United States in non-bankruptcy proceedings remained unaffected. *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483; *Price* v. *United States*, 269 U. S. 492; *Stripe* v. *United States*, 269 U. S. 503; *United States* v. *Butterworth-Judson*, 269 U. S. 504; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 238-239; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290. See Rogge, *The Differences in Priority of the United States in Bankruptcy and in Equity Receiverships*, 43 Harv. L. Rev. 251; Blair, *The Priority of the United States in Equity Receiverships*, 39 Harv. L. Rev. 1. We are aware of but a single case in which an appellate court has specifically passed upon the contention that the priority granted to the United States in non-bankruptcy proceedings by § 3466 has been modified by § 64 of the Bankruptcy Act. And in that case, the contention was rejected. *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221.[7]

While the point was not discussed in the courts below, it is now urged that the objectives and provisions of the National Housing Act require us to hold that claims of the United States arising under it are not entitled to the priority awarded by § 3466. We are aware of no canon of statutory construction compelling us to hold that the word "first" in a 150 year old statute means "second" or "third", unless Congress later has said so or implied it unmistakably.

Certainly there is no provision in the National Housing Act expressly relinquishing the priority of the United States with respect to claims arising under it. At best, therefore, such an intention on the part of Congress must be found in some patent inconsistency between the purposes of the Housing Act and § 3466. The plain objective of the Housing Act was to stimulate the building trades and to increase employment. In order to induce banks and other

[7] A similar contention with respect to § 57j of the Bankruptcy Act was rejected in *In re Assignment for Benefit of Creditors of T. J. Simpson, Inc.*, 15 N. Y. S. 2d 1021.

lending institutions to get the program under way. Congress promised that the United States would make good up to 20% on the losses they might incur on such loans.[8] As between the government and the lending institutions, it was clearly intended that the United States should bear the losses resulting from defaults. But beyond this we may not go. There is nothing to show a further intention that the United States should relinquish its priority as to claims against defaulting and insolvent borrowers whose notes it takes up from the lending institution pursuant to the insurance contract. That is, the ultimate collection of bad loans was consigned to the United States rather than to the lending institutions, but the collecting power of the United States was neither abridged nor qualified.[9]

We are told, however, that the broad purposes of the Act would be thwarted if we failed to assume that Congress intended to surrender this priority. The reason advanced is that suppliers of goods and services would refuse to extend credit to those desiring to make property improvements if they knew that in the event of insolvency their claims would be subordinated to those of the United States. The fatal weakness of this contention is that the Federal Housing Administration imposes an ironclad requirement that the proceeds of insured loans be used for no purpose other than the improvements described in the application for the loan.[10] Indeed, lending institutions frequently pay the proceeds of the loan directly to the suppliers of goods and services rather than to the property owner, and the practice has met with the enthusiastic approval of the Administration.[11]

Consequently, the argument against the application of § 3466 is reduced to this: Private persons in general are reluctant to extend credit when they know that in the event of the borrower's

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[8] 48 Stat. 1246, c. 847, § 2.

[9] The priority granted by § 3466 is, of course, no guaranty that the United States will be saved from loss. In the instant case, for example, the assets available for distribution are so small that the United States will lose heavily even if its claim is first satisfied.

[10] "Modernization Credit Plan," Bulletin No. 1 (Aug. 10, 1934) pp. 15, 16-17; *id.* (Sept. 12, 1934 revision) p. 22; *id.* (July 15, 1935, revision) p. 19; *id.* (July 20, 1936 revision) pp. 6-7; "Property Improvement Loans Under Title I" (Feb. 4, 1938) pp. 4, 23; *id.* (July 1, 1939 revision) p. 15; *id.* (March 15, 1940 revision) p. 10.

[11] "Modernization Credit Plan," Bulletin No. 1 (Sept. 12, 1934 revision) p. 29; *id.* (July 15, 1935 revision) p. 15; "Property Improvement Loans Under Title I" (Feb. 4, 1938) p. 33; *id.* (July 1, 1939 revision) p. 30; *id.* (March 15, 1940 revision) regulation No. VIII.

insolvency the claims of the United States will receive priority, and this circumstance is particularly undesirable in times of economic stress. In the first place, whatever may be the merits of the contention, it should be addressed to Congress and not to this Court. In the second place, the argument proves too much. If it is sound as applied to this kind of a claim of the United States, it is equally sound as applied to all claims as to which the United States asserts priority under § 3466.

Neither *Cook County National Bank* v. *United States*, 107 U. S. 445, nor *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, requires a different conclusion. In the former case, the United States was denied its § 3466 priority in connection with a claim against a national bank for the amount of certain funds of the United States deposited with it. The decision was based on two grounds. First, the national banking Act undertook to provide a complete system for the establishment and government of banks, and it included specific provisions concerning the distribution of the assets of insolvent banks which were plainly inconsistent with the granting of priority to general claims of the United States. Second, the national banking Act expressly authorized the Secretary of the Treasury to require national banks accepting deposits of federal funds to give satisfactory security; it was held to be fairly inferable that Congress intended the United States to look to this provision rather than to § 3466 for protection.

The claims which were denied priority in the *Guaranty Trust* case arose under Title II of the Transportation Act of 1920. That Act provided for the funding of debts to the United States which the railroads had contracted during the period of wartime control, and also provided for new loans to the railroads. In holding § 3466 inapplicable to the collection of these loans the Court emphasized that the basic purpose of the Act was to promote the general credit status of the railroads, that the railroads were required to furnish adequate security for the payment of both the old and new loans, and that the interest rate of 6% on one class of loans was "much greater than that which ordinarily accompanies even a business loan carrying such assurance of repayment as would have resulted from an application of the priority rule." 280 U. S. at 486. These factors persuaded the Court that Congress had intended to exclude these loans from the scope of § 3466.

In the instant case none of these circumstances is present. The National Housing Act contains no reference to the liquidation of estates of insolvent borrowers, and consequently no direct inconsistency with § 3466 is possible. The purpose of Title I was not the strengthening of the *general* credit of property owners, but the stimulation of the building trades by affording assurances to lending institutions in order to induce them to make loans for property improvements. No security was required of the borrowers, and the interest charge was low.[12] Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of § 3466. We think such inconsistency is wholly wanting here.

Section 3466 is applicable to this proceeding, and it requires that the claim of the United States be first satisfied.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[12] Not until 1939, four years after the note in this case was executed, did the Federal Housing Administration even require the lending institutions to pay premiums for the insurance of Title I loans. 53 Stat. 805, c. 175, § 2. The income from these premiums was to be used primarily to meet operating expenses under Title I and secondarily to meet losses resulting from defaults. In his report dated April 1, 1941, the Administrator estimated that for the fiscal year ending June 30, 1941 this income from premiums would prove sufficient to reimburse the United States for less than half its losses under Title I, and that $4,000,000 of public funds would be required to meet the balance. Report of the Federal Housing Administration for the year ending Dec. 31, 1940, p. 11.

SUPREME COURT OF THE UNITED STATES.

No. 33.—October Term, 1941.

The United States of America, Petitioner, *vs.* Harry S. Emory, St. James Distillery, Inc., and St. James Distillery.	On Writ of Certiorari to the Springfield Court of Appeals, State of Missouri.

[December 15, 1941.]

Mr. Justice Reed, dissenting.

The purpose and provisions of the National Housing Act[1] lead me to the conclusion that § 3466 of the Revised Statutes is inapplicable to the claim of the Administrator in this case.[2]

A statute is not to be interpreted by its text alone, as though it were a specimen under laboratory control. It takes meaning from

[1] Act of June 27, 1934, c. 847, Tit. I, § 2, 48 Stat. 1246, as amended 49 Stat. 299, 49 Stat. 722, 49 Stat. 1187, 49 Stat. 1234. The statute as thereafter amended subsequent to the events of this case may be found as 12 U. S. C. § 1703 (1940).

[2] Previous decisions in other courts concededly are to the contrary. In re Long Island Sash & Door Corp., 259 App. Div. 688, 20 N. Y. S. 2d 573, aff'd mem. 284 N. Y. 713, 31 N. E. 2d 48, cert. den. 312 U. S. 696; In re Dickson's Estate, 197 Wash. 145, 84 P. 2d 661. Accord, Korman v. Federal Housing Administrator, 113 F. 2d 743 (App. D. C.); Wagner v. McDonald, 96 F. 2d 273 (C. C. A. 8th); In re Weil, 39 F. Supp. 618 (M. D. Pa.); In re Wilson, 23 F. Supp. 236 (N. D. Tex.); cf. Federal Reserve Bank of Dallas v. Smylie, 134 S. W. 2d 838 (Tex. Civ. App.) (Farm Credit Administration); see 52 Harv. L. Rev. 320. United States v. Summerlin, 310 U. S. 414, held only that the claim assigned to the administrator became a claim of the United States not subject to a state statute of "non-claim". It did not pass upon the right to priority under § 3466 in the decedent's estate. Compare Dupont De Nemours & Co. v. Davis, 264 U. S. 456, where the Director General of the railroads was held free from limitation, with Mellon v. Michigan Trust Co., 271 U. S. 236, where the Director General was denied priority under § 3466. United States v. Marxen, 307 U. S. 200, 203, expressly did not decide the point.

other enactments forming the whole body of law bearing upon its subject.[3] If, like § 3466, it has been upon the books for years, the precedents interpreting its meaning must be considered in connection with it, particularly when, as here, new legislation is passed which may be inconsistent with its application.[4]

From past interpretation we learn that the traditional function of § 3466 is the assurance of the public revenue,[5] whatever may be the expense to the competing creditors. Their interests are subordinated to the general advantage.[6] Title I of the National Housing Act, however, is not a revenue measure—it was intended to stimulate recovery and employment in the construction industries and to enable property-owners to obtain funds for sorely needed repairs by insuring financial institutions against loss on loans for such work.[7] This was accomplished by what is in effect a guarantee that all losses on rehabilitation loans up to a predetermined percentage (20% here) of the total made by the financial institution would be borne by the United States, either by taking over loans in default or paying the deficit.[8] That loss Congress intended the government to bear.[9] In estimating the loss it relied upon the experience of pri-

[3] Keifer & Keifer *v.* R. F. C., 306 U. S. 381, 389.

[4] United States *v.* Marxen, 307 U. S. 200, 206; United States *v.* Knott, 298 U. S. 544, 547-48; Mellon *v.* Michigan Trust Co., 271 U. S. 236, 240.

[5] Spokane County *v.* United States, 279 U. S. 80, 92; Price *v.* United States, 269 U. S. 492, 500; Bramwell *v.* U. S. Fidelity Co., 269 U. S. 483, 487.

[6] United States *v.* Fisher, 2 Cranch 358, 389.

[7] Message of the President, May 14, 1934, 78 Cong. Rec. 8739-40 (Senate), *id.* at 8773-74 (House). Concerning the doldrums of the construction industry, see 78 Cong. Rec. 11194, 11198, 11210, 11211; Hearings on Sen. 3603, Committee on Banking and Currency, 73d Cong., 2d Sess., May 16-24, 1934, pp. 166 ff. Concerning the need for repairs, see 78 Cong. Rec. 11194, 11214; Hearings on Sen. 3603, *supra*, at pp. 36, 48, 288, 290.

[8] Regulation No. 18—Modernization Credit Plan—Title I, National Housing Act, provided: "The Federal Housing Administration will reimburse any insured institution on losses up to a total aggregate amount equal to 20% of the total face amount of all qualified notes taken or current face value of notes purchased by the financial institution, during the time the insurance contract is in force, and held by it or on which it continues liable. . . ." Modernization Credit Plan, Bulletin No. 1, p. 20 (revised reissue, Dec. 10, 1934).

[9] Senator Bulkley, chairman of the subcommittee (78 Cong. Rec. 11974) stated to the Senate: "It is contemplated that there will be a loss to the Government under this title, but that probably the loss will not be very great. . . . The reason we justify this provision is that it will make possible a considerable expenditure of money on needed repairs and renovation and thereby stimulate business in trades which very much need stimulation at this time." 78 Cong. Rec. 11981, 73d Cong., 2d Sess.

vate companies which were unaided by any such priority as § 3466.[10] Loans could not be made for a longer term than five years and many would be for less. Stable economic improvement was hardly to be expected within that time, and yet many of those who borrowed would die, or default, and undergo some sort of financial liquidation. The enforcement of § 3466 under those circumstances would shift the loss from the government to competing creditors, thus hampering the efforts of private business and capital to achieve that economic recovery which was the aim of the legislation.[11]

Nothing in the hearings, the debates or the Act show definitively that Congress considered the application of § 3466 to government claims under the National Housing Act. If the two acts alone were to be appraised, it might well be concluded that as they are not necessarily inconsistent, both should be enforced. But the determination of Congressional purpose is not so simple as that. Upon the assumption that the applicability of § 3466 never came to the attention of Congress, we must find legislative purpose not from the language of the two Acts alone but from generalizations as to the object of the new statute and from judicial interpretations of the meaning of the old. To reach a sound conclusion as to the applicability of the priority statute and the purpose of Congress deduced merely from the state of the law at the time of the enactment of the Housing Act, we need to weigh the precedents under § 3466 quite as carefully as the Acts themselves, in order to develop the legal situation into which the Housing Act was injected. When this is done, it is apparent that each time this Court has considered legislative purpose as to § 3466 in relation to government claims under public financial legislation affecting creditors competing with the Government, it has determined § 3466 did not apply.[12]

The National Housing Act was "one of the latest of a series of enactments, extending over more than a century, through which the

[10] 78 Cong. Rec. 11195-11196, 11981, 11982, 73d Cong., 2d Sess. See Hearings on Sen. 3603, *supra*, at pp. 293-94.

[11] These loans were to be so-called "character" loans, in reliance on the character and stable earnings of the borrower. 78 Cong. Rec. 11194, 11195, 11981. It was expected that while many persons at the time had no stable income, the Act would temporarily promote new employment which once under way was hoped would continue long enough of its own force to culminate in permanent business recovery and repayment of the borrowed money. Hearings on Sen. 3603, *supra*, at pp. 46, 173.

[12] Cook County Nat. Bank *v.* United States, 107 U. S. 445; United States *v.* Guaranty Tr. Co., 280 U. S. 478; cf. Sloan Shipyards *v.* U. S. Fleet Corp., 258 U. S. 549; Mellon *v.* Michigan Trust Co., 271 U. S. 236.

Federal Government has recognized and fulfilled its obligation to provide a national system of financial institutions. . . .'"[13] Section 3466 is inconsistent with this purpose.[14] It is not significant that in the case of Cook County National Bank the debtor bank against which priority was denied was in the federal financial system, while here the debtor is a private corporation which has participated in a federal financing plan. The intrusion of a novel priority, uncertain in amount because unrecorded, into the intricate credit system of the nation at a time of strain, would be a drag on recovery rather than a stimulus. Suppliers of goods or services in all fields of credit activity would be moved to constrict their advances to a borrower known to have created a secret but valid lien upon his assets superior to all general creditors. The full reach of the implication of credit dislocation may be readily gauged by the fact that at the end of 1936, 1,326,102 separate rehabilitation loans had been made under Title I for an aggregate amount of $500,220,642.[15] Possible priorities will now exist for every outstanding dollar.

The facts of this case show how government aid to a debtor may be a snare for his other creditors if the priority statute operates in this class of claims. About a dozen claimants became creditors in the aggregate amount of some nine hundred dollars for labor. Such labor claims were entitled to the preference under Missouri law common to labor claims. But for the priority of the government's claim, they would receive all of the realization from the assets—about two-thirds of their claims. But a month before the appointment of the receiver the Federal Housing Administration took over from a bank a note of about $6000. From a deferred position in the hands of the bank this debt is said to have stepped into a preferred position by transfer to the government agency. As such it absorbs all of the assets, and the laborers who trusted their employer's credit get nothing. Such a preference of creditors, brought about by the debtor, would be an act of bankruptcy.

In 1920 when the railroads needed funds but lacked credit for private borrowing, government loans were authorized by Congress

[13] Validity of Certain Provisions of the National Housing Act, 38 Ops. Atty. Gen. 258, 262.

[14] Cook County Nat. Bank v. United States, 107 U. S. 445.

[15] Third Annual Report of the Federal Housing Administration, House Doc. No. 48, 75th Cong., 1st Sess., p. 7.

based upon such prospective earning power and security as would furnish reasonable assurance of repayment.[16] In *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, we held that the rehabilitating functions and the security provisions of the Transportation Act of 1920 were so inconsistent with § 3466 as to preclude its application in the receivership of a debtor railroad. Even more inconsistent considerations exist in this case. Congress was confronted with widespread need of repairs on property owned by persons without the cash or credit to secure them.[17] Moreover, not only homeowners but, like the railroads, hard pressed business establishments such as the distillery in this case were to be assisted in securing modernization loans.[18] Instead of lending these people federal funds, Congress lent them federal credit on which to borrow private funds, with the evident purpose of keeping the program as much as possible a matter of private enterprise handled in the course of private affairs. Assurance of repayment was rested not on a combination of security and earning power but deliberately upon earning power alone.[19] Whereas with the railroads interest corresponding to the risk was charged, no premium was charged for the insurance of loans under Title I, with the expectation that the government would pay the loss as its contribution to recovery.[20] The declared purpose of the United States to absorb the losses of the lenders is clearly inconsistent with the priority over other creditors given by § 3466. It seems beyond doubt to me that Congress did not expect a priority under Title I which the *Guaranty Trust* case certainly denied it under Title II relating to insured mortgages.[21]

Even in the mechanics of its operation Title I repudiated the benefits of § 3466. Collection was left to the financial institution

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[16] Transportation Act of 1920, § 210, 41 Stat. 468.

[17] 78 Cong. Rec. 11199, 11388, 11981, 73d Cong., 2d Sess.; Hearings on Sen. 3603, *supra*, at pp. 30, 172, 174, 179.

[18] The loan limit of Title I was soon increased to meet business needs. Amendment of May 28, 1935, 49 Stat. 299.

[19] 78 Cong. Rec. 11194, 11195, 11981, 11982, 73d Cong., 2d Sess.; Hearings on Sen. 3603, *supra*, at pp. 37, 39, 293.

[20] Senator Bulkley stated: "The lender receives 20 percent insurance automatically as an inducement to make loans of this particular character. Frankly it is contemplated that the Government will lose some money." 78 Cong. Rec. 11982, 73d Cong., 2d Sess. See also 78 Cong. Rec. 11195; Hearings on Sen. 3603, *supra*, at p. 34-35.

[21] Moreover, since July 1, 1939, there is a .75% insurance charge under Title I, so that in the future, whatever the decision here, even Title I would seem to be governed by the Guaranty Trust case. 24 C. F. R. § 501.18 (Supp. 1939).

after default so long as there was hope of partial liquidation.[22] The lender, of course, had no priority.

The judgment should be affirmed on the ground that no priority exists by virtue of § 3466.

Mr. Justice ROBERTS, Mr. Justice DOUGLAS and Mr. Justice JACKSON concur in this dissent.

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[22] Modernization Credit Plan, Bulletin No. 1, *supra*, at p. 8 states: "It is to the interest of the financial institution to carry the collection process on a defaulted note as far as there is reasonable prospect of ultimate payment inasmuch as complete reimbursement for any expenses incurred is provided as specified hereinafter. This policy will tend to conserve the insurance reserve of 20% for possible later losses and also will maintain the understanding of the local community that these notes require the same prompt handling by makers as any other credit obligation. . . . it is the policy of the Federal Housing Administration to permit financial institutions every possible latitude in making collections on delinquent items. It is only after it clearly appears that further collection efforts will be fruitless that the Federal Housing Administration will insist that claims be made. Financial institutions are, therefore, given a full year after default on the note to effect collection. . . . If 10% of the amount due on the note is collected within the first year after default on the note and so long thereafter as 5% at least is collected in each six-month period, the Federal Housing Administration will not require that claim be made, but will permit the financial institution to proceed with its collection efforts. Claims may include: (1) Net unpaid principal; (2) uncollected earned interest (after maturity interest is not to be claimed at a rate exceeding 6% per annum); (3) uncollected "late charges"; (4) uncollected court costs, including fees paid for issuing, serving and filing summons; (5) attorney's fees not exceeding 15% of the amount collected on the defaulted note; (6) handling fee of $5 for each note, if judgment is secured, plus 5% of amount collected subsequent to return of unsatisfied property execution."